

Taxation Laws (Amendment) Bill, 2019

- Understanding certain impacts

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Introduction

“The national budget must be balanced. The public debt must be reduced; the arrogance of the authorities must be moderated and controlled. Payments to foreign governments must be reduced, if the nation doesn't want to go bankrupt. People must again learn to work, instead of living on public assistance.”

- Cicero (106 BC -43 BC), 55 BC



- ❖ Much-needed stimulus to corporates and push economic growth, this was promulgated by the President of India on 20-09-2019.
 - Roll-Back of surcharge from capital gains arising from investment in capital market-
 - tax benefits to corporates .
- ❖ As Ordinance must be approved by the Parliament within six weeks of reassembling, the Government has, therefore, tabled 'The Taxation Laws (Amendment) Bill, 2019' in the parliament

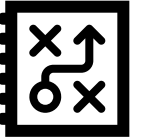
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Roll Back of Enhanced Surcharge

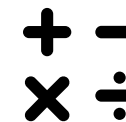


Tax Rates – Personal Taxation

| | | | | |
|---|----------------------------------------------------------|--|-------------------------|-----------------------------------------------------------------------------|
| 1 | Increase in Surcharge | | Effective Rate | T.I. above 2 Cr < 5 Cr – Rate 39% |
| | T.I. above 2 Cr – 5 Cr – 25% | | | T.I. above 5 Cr – Rate 42.74% |
| | T.I. above 5 Cr – 37% | | Capital Gain Tax | S.111A (21.37%), S.112 (28.50%), S.112A (14.25%) |
| 2 | Maximum Marginal Rate rises from 35.88% to 42.74% | | Dividend Tax | S.115BBDA (14.25%) |
| | | | Others | Applicable to HUF, AOP, BOI, Artificial Judicial Person, FPI, Trust |

Withdrawal is limited only to tax

- Transactions charged with STT
 - ✓ STCG – **Sec. 111A**
 - ✓ LTCG – **Sec. 112A**
- FPI's Capital Gains from securities – Sec. 115AD (**Including gain from derivatives**)

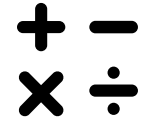


Impact of Changes

| | |
|------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Total Income \leq 50 L | ⦿ No Surcharge |
| Total Income $>$ 50 L but \leq 1 cr | ⦿ 10% Surcharge |
| Total Income $>$ 1 cr but \leq 2 cr | ⦿ 15% Surcharge |
| Other Income $>$ 2 cr but \leq 5 cr | ⦿ 25% on Tax on Other Income ⦿ 15% on Tax on Specified Cap Gain |
| Other Income $>$ 5 cr | ⦿ 37% on Tax on Other Income ⦿ 15% on Tax on Specified Cap Gain |
| Total Income $>$ 2 cr but Other Income \leq 2 cr | ⦿ Surcharge @ 15% |

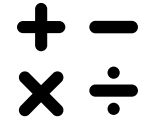
*Specified Cap Gain = Sec. 111A STCG / 112A LTCG / 115AD
Other Income = Total Income – Specified Cap Gain*

Impact of Changes



| Particulars | Other Income | STCG - 111A | LTCG - 112A | Total |
|----------------|--------------|-------------|-------------|-----------|
| Income | 1.5 cr | 1 cr | 2 cr | 4.5 cr |
| Tax | 43,12,500 | 15,00,000 | 19,90,000 | 78,02,500 |
| Surcharge Rate | 15% | 15% | 15% | |
| Surcharge | 6,46,875 | 2,25,000 | 2,98,500 | 11,70,375 |
| Cess | 1,98,375 | 69,000 | 91,540 | 3,58,915 |
| Total | 51,57,750 | 17,94,000 | 23,80,040 | 93,31,790 |

Impact of Changes



| Particulars | Other Income | STCG - 111A | LTCG - 112A | Total |
|----------------|--------------|-------------|-------------|-------------|
| Income | 6 cr | 1 cr | 2 cr | 9 cr |
| Tax | 1,78,12,500 | 15,00,000 | 19,90,000 | 2,13,02,500 |
| Surcharge Rate | 37% | 15% | 15% | |
| Surcharge | 65,90,625 | 2,25,000 | 2,98,500 | 71,14,125 |
| Cess | 9,76,125 | 69,000 | 91,540 | 11,36,665 |
| Total | 2,53,79,250 | 17,94,000 | 23,80,040 | 2,95,53,290 |



Booster for Corporates

Major Changes



Section 115BAA

*Option to pay tax @22%
for every domestic companies*

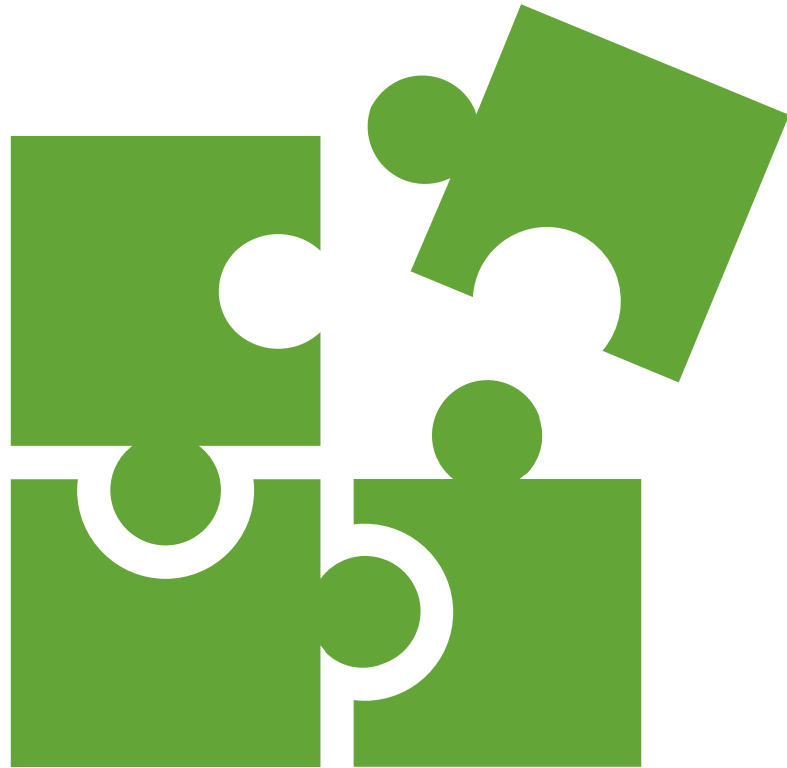
Section 115BAB

*Option to pay tax @15%
for new domestic
companies engaged in
manufacturing business*

Amendments in a nutshell

| Particulars | Normal Tax Regime | | | Concessional Tax Regime | |
|-------------------------------------------------------------------------|-----------------------------------------------------------------------------|-----------------------------|---------------------------------------------------------------------------------------|--------------------------------------------------------|-------------------------------------------------------------------------------------------|
| | Section 115BA (Optional) | Others Turnover > 400 Cr | Others Turnover < 400 Cr | Section 115BAA (Optional) | Section 115BAB (Optional) |
| Applicability | AY 2017-18 onwards to all domestic co. engaged in manufacturing/ production | Any domestic company | Any domestic company | AY 2020-21 onwards for all existing domestic companies | AY 2020-21 onwards for new domestic co engaged in manufacturing/ production |
| Eligibility start date | Set up and registered on or after 1 March 2016 | Not Applicable | Turnover or gross receipt in the previous year 2017-18 does not exceed Rs. 400 crores | AY 2020-21 onwards | Set up or after 1 Oct 2019 & commencement of manufacturing by 31 March 2023 |
| Allowability -prescribed deduction/ loss | Not allowed | Allowed | Allowed | Not allowed | Not allowed |
| Basic tax rate | 25% | 30% | 25% | 22%* | 15%* |
| Surcharge | 7%/ 12% | 7%/ 12% | 7%/ 12% | 10%* | 10%* |
| Cess | 4% | 4% | 4% | 4% | 4% |
| Applicability of MAT | 15% | 15% | 15% | Not applicable | Not applicable |
| Restriction -formed by restructuring/ use of old P & M/ use of building | No | Not Applicable | Not Applicable | Not Applicable | Yes |

**Subject to the provisions of other sections of Chapter XII*



Section 115BAA New Tax Regime for all domestic Co.

Section 115BAA (Optional)

[Applicable for AY 2020-21 onwards]



Option to adopt a 22% tax rate regime (*Effective tax rate 25.17% including Surcharge & Cess*)- to be exercised **on or before filing of tax return**

- However, following deductions shall not be allowed under this option
 - ❖ Section 10AA in respect of units in SEZ (Sunset clause - March 31, 2020)
 - ❖ Additional depreciation on new plant and machinery [Section 32(1)(ia)]
 - ❖ Investment Allowance in new plant or machinery [Section 32AD]
 - ❖ Investments in specified development accounts and funds
 - ❖ Weighted deduction for expenditure on scientific research or on specified business/projects (set to expire from AY 2021-22)
 - ❖ Chapter VI-A claims under the Heading C (except Section 80JJAA i.e., deduction for employment of new employees)
- Depreciation to be computed as per **prescribed manner**
- Tax Loss attributable to the above deductions not permitted to be set-off or carried forward**
- No MAT applicable

Option once exercised cannot be withdrawn

When to opt for Section 115BAA- Break-even

| Particulars | Concessional Tax Regime (in INR) | Normal Tax Regime (in INR) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------|
| Pre-deduction Income | 100.00 | 100.00 |
| Less: deductions/ incentives | Not Applicable | 27.96 |
| <ul style="list-style-type: none"> • 10AA • 32AB • 32(1)(iia) • Chapter VI-A (Except 80JJAA) • B/F Loss & Depreciation • Others | | |
| Profit before Tax | 100.00 | 72.04 |
| Tax Rate | 25.17% | 34.94% |
| Tax in INR | 25.17 | 25.17 |
| Assumption: Company is not liable to pay tax under MAT/ no MAT credits are available | | |

01 If aggregate *deductions/ incentives* is less than 28% – Concessional tax regime beneficial



02 If aggregate *deductions/ incentives* are more than 28% - normal tax regime beneficial

Issue - Potential controversies relating to losses/ depreciation

Attribution of losses / unabsorbed depreciation

- whether loss to be foregone should be restricted to only weighted deduction portion ?
- Unabsorbed additional depreciation foregone: implications for WDV ?

Companies are not eligible to set-off the unabsorbed depreciation attributable to additional depreciation. However, it has been provided that if any unabsorbed depreciation, relating to additional depreciation, has not been given full effect, corresponding adjustment shall be made to WDV of the block of assets in prescribed manner

The CBDT may notify the mechanism for adjustment of unabsorbed depreciation (relating to additional depreciation) in situations relating to amalgamation, demerger, slump sale, etc.

Example - Potential controversies relating to losses/ depreciation

Assessment Year 2019-20

| Computation of depreciation and WDV | Amount (in Rs.) |
|-------------------------------------|--------------------|
| WDV as on 01-04-2018 | 20,00,000 |
| Add: new machinery on 01-05-2018 | 8,00,000 |
| Total Depreciable Value | 28,00,000 |
| Less: Depreciation | |
| - Normal depreciation @15% | 4,20,000 |
| - Additional depreciation @ 20% | 1,60,000 |
| WDV as on 31-03-2019 | 22,20,000 |

| Computation of taxable profit | Amount (in Rs.) |
|-------------------------------------------------------------------|--------------------|
| Profit before depreciation | 1,00,000 |
| Less: Depreciation | |
| - Additional depreciation @ 20% | 1,60,000* |
| - Normal depreciation @15% | 4,20,000 |
| Total Loss | (4,80,000) |
| Component of loss (Attribution of loss) | |
| - Unabsorbed depreciation attributable to additional depreciation | 60,000 |
| - Unabsorbed depreciation attributable to normal depreciation | 4,20,000 |

Assessment Year 2020-21

| Computation of depreciation and WDV | Section 115BAA | Normal Regime |
|----------------------------------------------|----------------|---------------|
| WDV as on 01-04-2019 | 22,20,000 | 22,20,000 |
| Add: new machinery on 30-06-2019 | 5,00,000 | 5,00,000 |
| Amount on which depreciation to be allowed | 27,20,000 | 27,20,000 |
| Less: Depreciation | | |
| - Normal depreciation at the rate of 15% | 4,08,000 | 4,08,000 |
| - Additional depreciation at the rate of 20% | Nil | 1,00,000 |
| WDV as on 31-03-2020 | 23,12,000 | 22,12,000 |

| Computation of taxable profit | Section 115BAA | Normal Regime |
|---------------------------------------------------|-----------------|---------------|
| Profit before depreciation | 6,00,000 | 6,00,000 |
| Less: Depreciation | | |
| - Additional Depreciation | Nil | (1,00,000) |
| - Normal Depreciation | (4,08,000) | (4,08,000) |
| Profit or loss after depreciation | 1,92,000 | 92,000 |
| Set-off of unabsorbed depreciation attributable : | | |
| - Additional depreciation | Nil | (60,000) |
| - Normal depreciation | (1,92,000) | (32,000) |
| Net profit after set-off of unabsorbed dep | Nil | Nil |
| Unabsorbed depreciation remaining after set-off | | |
| - Additional Depreciation | Lapsed** | Nil |
| - Normal Depreciation | 2,28,000 | 3,88,000 |

** Shall be adjusted to WDV of the block of asset as may be prescribed



Section 115BAB

Tax on income of certain new domestic manufacturing companies

Section 115BAB (Optional)

[Applicable for AY 2020-21 onwards]



Option to adopt a 15% tax rate regime (*Effective tax rate 17.16% including Surcharge & Cess*)- to be exercised **on or before first of the returns of income for any FY relevant to AY 2020-21 or later**

- The domestic company should be incorporated on or after 01-10-2019;
- Commence the **manufacturing or production of an article or thing** after 01-10-2019 but before 31-03-2023;
- It must be engaged in the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it. Excluded from the scope of Section 115BAB following Co.:
 - ❖ Development of computer software in any form or in any media; *Oracle Software India Ltd. (2010) 320 ITR 546 (SC)*
 - ❖ Mining; *Sesa Goa Ltd. (2004) 271 ITR 331*
 - ❖ Conversion of marble blocks or similar items into slabs; *Arihant Tiles & Marbles (P) Ltd. (2010) 320 ITR 79 (SC)*
 - ❖ Bottling of gas into cylinder; *Hindustan Petroleum Corpn. Ltd. (2017) 396 ITR 696 (SC)*
 - ❖ Printing of books or production of cinematograph film; *D.K. Kondke / [1991] 192 ITR 128 (Bom)* or
 - ❖ Any other business as may be notified by the Central Govt.
- The Business must not be formed by **splitting up or reconstruction** of an existing business (Except Sec 33B); *107 ITR 195 (SC)*
- Not use any building which was previously used as a hotel or a convention centre (sec. 80-ID benefit availed);
- Not **use** any machinery or plant previously used for any purpose. any plant or machinery which was used outside India shall not be treated as used for any other purpose, if following conditions are satisfied:
 - ✓ Before the date of installation, they were not used in India; These assets were imported into India; and
 - ✓ No deduction on account of depreciation has been allowed or allowable on such plant and machinery before they were installed by the assessee (**Permitted up to 20% of total value of plant and machinery**); *Bajaj Tempo Ltd. vs. CIT 196 ITR 188 (SC) – diluted*

Option once exercised cannot be withdrawn

Section 115BAB (Optional)

[Applicable for AY 2020-21 onwards]



- Following deductions shall not be allowed under this option
 - ❖ Section 10AA in respect of units in SEZ (Sunset clause - March 31, 2020)
 - ❖ Additional depreciation on new plant and machinery [Section 32(1)(ia)]
 - ❖ Investment Allowance in new plant or machinery [Section 32AD]
 - ❖ Investments in specified development accounts and funds
 - ❖ Weighted deduction for expenditure on scientific research or on specified business
 - ❖ Chapter VI-A claims under the Heading C (except Section 80JJAA)
- Depreciation to be computed as per **prescribed manner**
- Tax Loss attributable to the above deductions not permitted to be set-off or carried forward**
- No MAT applicable

Non-Compliance of Condition- option to Switch

If Co fails to comply with any of the prescribed conditions in any previous year, then the option to pay tax at concessional rate shall become invalid for that year and for all subsequent assessment years. Thus, in such a situation, the **Co has to switch to tax regime available under Section 115BAA or Section 115BA or other provisions of the Act.**

Section 115BAB (Optional)

[Applicable for AY 2020-21 onwards]



Concessional rate with reference Manufacturing Activity

| Incomes | Tax rate | Remarks |
|-----------------------------------------------------------------|----------|-------------------------------------------------------------|
| Income from manufacturing activities | 15% | |
| Income from non-manufacturing activities | 22% | Taxable on Gross Basis – no expenditure or allowance |
| Short-term capital gain from transfer of depreciable assets | 15% | |
| Short-term capital gain from transfer of non-depreciable assets | 22% | |
| Excess profit derived due to arranged affairs | 30% | Subjected to Transfer Pricing section 92BA |
| Special Incomes (Chapter XII) | | |
| STCG – section 111A | 15% | |
| LTCG – Section 112A | 10% | |
| LTCG – Section 112 | 20% | |
| Undisclosed Income – Section 115BBE | 60% | |

Relevant Surcharge or 10% ??



MAT
New Regime for
Co. opting
Section 115BAA
or Section
115BAB

NO MAT ON COMPANIES

[Applicable for AY 2020-21 onwards]



OPTING FOR SECTION 115BAA AND 115BAB

To provide additional benefits to the companies opting for Section 115BAA or Section 115BAB, Section 115JB has been proposed to be amended by the Taxation Laws (Amendment) Bill, 2019, to provide that the provisions relating to MAT shall not be applicable on such companies.

For others – Rate reduced from 18.5% to 15%

MAT Credit

Proposed amendment in Section 115JAA(8) prohibits an existing domestic company, which has opted for Section 115BAA, not only to utilize the MAT credit but also to carry forward the MAT credit. Thus, the unclaimed balance of MAT Credit shall lapse in the year in which company chooses to apply new tax regime.

Proviso to Section 115BAA(1) proposes that the option exercised under this section shall become invalid if company fails to satisfy the conditions prescribed in Section 115BAA(2). It shall be liable to pay tax as per normal provisions. In such case whether the unutilised MAT credit can be utilised ? Language of section not clear.

Whether section 115BAA should be opted if there is a MAT credit ?

| Particulars | Amount |
|----------------------------------------------------------------------------------------|--------|
| Present value of future tax liability of co. if it does not opt for Section 115BAA [A] | xxx |
| Present value of future tax liability of co. if it opts for Section 115BAA [B] | xxx |
| Present Value of Net Saving (if positive) [C = A-B] | xxx |

[A] Present value of future tax liability if co. does not opt for Section 115BAA

Step 1 : Calculate net tax liability of future years at the current enacted rate assuming that the company does not opt for Section 115BAA. Such tax outgo shall be calculated till that year in which the MAT credit is fully utilized.

Step 2: Calculate the present value of net tax liability calculated in Step 1 as per applicable discounting rate

[B] Present value of future tax liability if co. opts for Section 115BAA

Step 3: Calculate net tax liability of future years at the current enacted rate assuming that the company opts for Section 115BAA. Such tax outgo shall be calculated till that year identified in Step 1 (in which the MAT credit is fully utilized).

Step 4: Calculate the present value of net tax liability calculated in Step 3 as per applicable discounting rate

[C] Calculate the net savings

Step 5: Calculate the difference between the figures computed in Step 4 and Step 2. If the result is positive, then the company should immediately opt for new tax regime of Section 115BAA. If the figure is negative, the company should defer the decision of opting the regime till that year in which this figure becomes positive.



Company vis-à-vis LLP/Individual

| Particulars | Domestic Co Section 115BAA | Domestic Co Section 115BAB | Domestic Co Turnover < 400 Crores | LLP/Firm | Individual |
|-----------------------------------------------------|-------------------------------|-------------------------------|-----------------------------------------|---------------|---------------|
| Income | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 |
| Less: Tax | 25.17 | 17.16 | 29.12 | 34.94 | 42.74 |
| Net Distributable Income | 74.83 | 82.84 | 70.88 | 65.06 | 57.26 |
| Less: DDT | 12.76 | 14.12 | 12.08 | - | - |
| Net Amount Distributed to Shareholders/Partners* | 62.07 | 68.72 | 58.80 | 65.06 | 57.26 |
| Effective Tax Rate | 37.93% | 31.28% | 41.20% | 34.94% | 42.74% |

*Dividend Distributed to Shareholders may further be liable to Personal Tax @ 10% - Section 115BBDA whereas, for Partner, it is Exempt under section 10(2A). Firm can also pay Interest on Capital upto 12%

