

SPECIAL TAXATION REGIME FOR COMPANIES

SECTION 115BAA: TAX ON INCOME OF CERTAIN DOMESTIC COMPANIES

New section 115BAA has been inserted by the Taxation Laws (Amendment) Act, 2019, **providing for concessional rates of tax and exemption from minimum alternate tax (MAT) in respect of domestic companies with effect from A.Y. 2020-21.**

1. Eligibility Criteria

The assessee is any domestic company;

2. Conditions to be fulfilled

The total income of the assessee is computed:

(i) Without any exemption or deduction under the provisions of:

- Section 10AA [Exemption for SEZ units]
- Section 32(1)(iia) [Additional depreciation @ 20%]
- Section 33AB [Tea, Coffee or Rubber development account]
- Section 35(1)(ii)/(iia)/(iii) [Deduction for payment to any research association, company, university etc. for undertaking scientific research or social science or statistical research @ 100%]
- Section 35(2AA) [Deduction @ 100% of payment to a National Laboratory or University or IIT or approved specified person for scientific research]
- Section 35(2AB) [Deduction @ 100% to Companies which are Engaged in Business of Bio Technology or Manufacture or Production of Specified Articles for Conducting in House Scientific Research]
- Section 35AD [Investment linked deduction]
- Section 35CCC [Expenditure on Agricultural Extension Project – Deduction @ 100%]
- Section 35CCD [Expenditure on Skill Development Project – Deduction @ 100%]
- **Chapter VI-A, except:**
 - **Section 80JJAA** [Deduction for additional employee cost]
 - **Section 80LA** (in case of unit located in IFSC)
 - **Section 80M** [Deduction in respect of certain inter-corporate dividends]

- (ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred above.
- (iii) loss or allowance for unabsorbed depreciation deemed so under section 72A if such loss or depreciation is attributable to any of the deductions referred above.

The loss and depreciation referred to in clause (ii) and (iii) shall be deemed to have been already given full effect to and no further deduction for such loss and depreciation shall be allowed for any subsequent year **i.e., such loss and depreciation shall lapse.**

3. Exercise of Option

The option to pay tax as per this section is exercised in prescribed form on or before the due date specified under section 139(1) for furnishing of return of income for assessment year 2020-21 or any subsequent assessment year.

Provided that once such option is exercised for any assessment year, the same shall apply to all subsequent assessment years. Therefore, the option so exercised cannot be withdrawn by the assessee subsequently for the same or any other previous year.

If the aforesaid conditions are fulfilled, the assessee shall have an option to pay income-tax @ 22% and it shall be increased further by a surcharge of 10% and health & education cess of 4%. (Effective tax rate = 25.168%)

4. Tax Rate Subject to provisions of Chapter XII

This section over-rides the entire Income-tax Act but is subject to the provisions of Chapter XII. Therefore, the following incomes shall not be taxed at 22% but at the rates specified therein:

	PARTICULARS	TAX RATE
1. Capital Gains:		
STCG referred to in Section 111A		15%
LTCG referred to in Section 112		10% or 20% as applicable
LTCG referred to in Section 112A		10%
2. Profits and Gains of Life Insurance Business – Section 115B		12.5%
3. Lottery Income – Section 115BB		30%
4. Certain dividends received from foreign companies – Section 115BBB		15%
5. Unexplained Cash-credits – Section 115BBE		78% (60% + 25% + 4%)
6. Income from Patent – Section 115BBF		10%
7. Income from Transfer of Carbon Credits – Section 115BBG		10%

The above rates shall be increased by a surcharge of 10% and health & education cess of 4%.

5. On failure to satisfy the conditions mentioned in (Point 2) above, the option exercised would be **invalid** in respect of the assessment year relevant to that previous year and subsequent assessment years. Consequently, the other provisions of the Act would apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

6. **MAT not to apply**

If assessee opts for section 115BAA, then provisions of MAT i.e. section 115JB shall not apply.

7. **Brought forward MAT credit cannot be set-off against income tax computed under section 115BAA.** If a company has brought forward MAT credit, it can first exhaust the MAT credit, and thereafter opt for section 115BAA in a subsequent previous years. If company opts for this section, **MAT credit will lapse.**

8. Where the option exercised by a company under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, **such person may exercise option under this section.** Accordingly, such company may pay tax @ 22% instead of 15% if it so desires.

9. **Other deductions not mentioned in Point 2 shall be available**

All other deductions which are not mentioned in Point 2 shall be available.

10. **Surcharge of 10% shall apply irrespective of the amount of total income.**

SECTION 115BAB: TAX ON INCOME OF NEW MANUFACTURING DOMESTIC COMPANIES

New section 115BAB has been inserted by the Taxation Laws (Amendment) Act, 2019, providing for concessional rates of tax and exemption from minimum alternate tax (MAT) in respect of domestic companies with effect from A.Y. 2020-21.

The conditions mentioned in Section 115BAA as discussed above shall apply *mutatis mutandis* with the following exceptions and modifications:

1. **Eligibility Criteria**

This section shall apply only to those companies which have been set-up and **registered on or after the 1st day of October, 2019** and have commenced manufacturing or production of an article or thing on or before the **31st day of March, 2024.**

(Finance Act, 2022)

Provided that –

- (a) the business is not formed by splitting up, or the reconstruction, of a business already in existence [**Exception given in section 80-IA shall also apply here.**]

- (b) it is not set up by the transfer to the specified business of machinery or plant previously used for any purpose; [i.e. new plant & machinery should be used] **[Two exceptions given in section 80-IA shall also apply here.]**
- (c) does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.
- (d) the company is not engaged in any business other than 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.

The business of manufacture or production of any article or thing shall include generation of electricity but shall not include business of,—

- (i) development of computer software;
- (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

2. **Conditions to be fulfilled**

Same as given in Analysis of section 115BAA, Point 2(ii) shall not apply since it is a new company and shall not have any carried forward loss or depreciation.

3. **Exercise of Option**

The option to pay tax as per this section is exercised in the prescribed form on or before the due date specified under section 139(1) for **furnishing of the very first return of income after the incorporation of the company**.

If the aforesaid conditions (in addition to conditions mentioned in Section 115BAA) are fulfilled, the assessee shall have an option to pay income-tax

- @ 15% on such income derived from or incidental to business referred to in 1(d) above,
- @ 22% on other income

and it shall be increased further by a surcharge of 10% and health & education cess of 4% in all cases irrespective of amount of total income.

4. **Tax Rate subject to provisions of Chapter XII**

Same as section 115BAA

5. Same as section 115BAA.

6. Same as section 115BAA.

7. Not applicable as New Company.

8. Where a company opts for section 115BAB but option becomes invalid because of

- (i) condition of not using new plant and machinery or / and

- (ii) condition that building is used for which section 80-ID was claimed or / and
- (iii) carries on business other than manufacture or production of any articles or things.

then such company can opt for section 115BAA.

9. Same as section 115BAA

10. Same as section 115BAA

SPECIAL TAX RATES FOR CERTAIN INCOMES FOR COMPANIES OPTING FOR SECTION 115BAB

Nature of Income		Tax Rate	Remarks
1.	Short term capital gains from transfer of non-depreciable assets	22%	15% Tax Rate shall apply if short term capital gains arises from transfer of depreciable asset
2.	Assessee shows more than ordinary profits. Ordinary profits = ₹ 200 lakhs Profits shown = ₹ 300 lakhs	More than ordinary profits to be taxed @ 30%. In example ₹ 100 lakhs to be taxed @ 30%	Ordinary profits i.e., ₹ 200 lakhs to be taxed at rate of 15%
3.	(a) Income from House Property (b) Income from other sources not covered by Chapter XII	Taxed @ 22%	No deductions of any expenditure or allowance shall be allowed. Income shall be taxed on Gross Basis @ 22%.