

Guidance Note on Report under section 115JC of the Income-tax Act, 1961



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

GUIDANCE NOTE ON TAX REPORT UNDER SECTION 115JC OF THE INCOME-TAX ACT, 1961



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

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Foreword

The Finance Act, 2011 for the first time introduced the provisions relating to Alternate Minimum tax for the Limited Liability partnerships. In order to moderate the outgo of profit linked deductions, the Finance Minister in the year 2012, extended the levy of this tax to all non corporate assesses. The onerous responsibility to verify the correctness of the adjusted total income and the alternate minimum tax computed in accordance with the requirements of the law was posed on the chartered accountants, who are required to issue a report in the prescribed format.

To enable our members to discharge their responsibility in an efficient and effective manner, the Direct Taxes Committee of the Institute of Chartered Accountants of India has come out with this Guidance Note. I sincerely appreciate the efforts of Direct Taxes Committee, particularly of CA. Manoj Fadnis, Chairman, CA. G. Sekar, Vice-Chairman and also our Council colleague CA. Tarun Ghia for responsibly undertaking and fulfilling this onerous task in time.

I am sure that this first edition of the Guidance Note will be helpful to our members in discharging their responsibility.

Date: 14.08.2013
Place: New Delhi

CA. Subodh K. Agrawal
President

Preface to the First Edition

Since taxes like Minimum Alternate tax on companies and Alternate minimum tax on limited liability partnerships were not levied on other business organizations like partnership firms, sole proprietorship, AOP etc, the Government thought it fit to widen the tax base vis-à-vis profit linked deductions. Accordingly, in the year 2012 the provisions of Alternate Minimum tax were made applicable to all non-corporate entities having adjusted total income exceeding rupees twenty lakhs. Further, to effectively implement the provisions of this section, the Government required the non-corporate assessee to obtain a report from the chartered accountant certifying the adjusted total income and alternate minimum tax computed thereon as per the provisions of the Act.

Considering the fact that this report requires the chartered accountant to certify the adjusted total income which is a resultant of total income of the assessee, the Direct Taxes Committee of ICAI felt the need of providing guidance with regard to this report to the members.

I am extremely thankful to CA. Subodh K. Agrawal, President and CA. K. Raghu, Vice President of the Institute of Chartered Accountants of India who have been the guiding source behind the release of this Guidance Note.

In order to prepare the basic draft of this important Guidance Note, the Committee formed a study group in Mumbai under the able convenorship of CA. Tarun Jamnadas Ghia, Central Council member. I express my sincere thanks to him and also all members of the study group being CA. Chandresh Bhimani, CA. Bharat Chovatia, CA. Atul Suraiya, CA. Amit Kothari and CA. Jignesh Salva, who spared their valuable time for preparing the basic draft of this guidance note.

I also appreciate the efforts of CA. Mukta Kathuria Verma, Secretary, Direct Taxes Committee and CA. Sheetal Ahuja, Executive Officer, Direct Taxes Committee for their technical and administrative assistance in bringing out this Guidance Note.

I am sure that this guidance note edition would be of great assistance to our members.

Date: 14.08.2013
Place: New Delhi

CA. Manoj Fadnis
Chairman
Direct Taxes Committee

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Clarification regarding authority attached to the documents Issued by the Institute

"Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary".

(Volume I.A of the Compendium of Engagement and Quality Control Standards (9th Edition, 2012), page 3, Para 5)

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1. Terms and abbreviations used in this Guidance Note

In this Guidance Note the following terms and abbreviations occur often in the text. A brief explanation of such terms and abbreviations is given below. Further reference to a section or chapter without reference to the relevant Act means that the section or the chapter has reference to the Income-tax Act, 1961.

(a) Act

The Income-tax Act, 1961

(b) Accountant

Accountant means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, as referred to in the explanation below section 288(2) of the Act.

(c) AMT

Alternate Minimum Tax as defined under section 115JF of the Act.

(d) Assessee or a non corporate assessee

Assessee or a non corporate assessee refers to Persons as defined under section 2(31) other than a company as defined in section 2(17) of the Act.

(e) ATI

Adjusted Total Income computed as per the provisions of section 115JC.

(f) AO

Assessing Officer

(g) AS

Accounting Standards issued by the Institute of Chartered Accountants of India.

(h) AS(IT)

Accounting Standards as notified by the Central Government under section 145(2) of the Act.

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(i) Board

The Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963.

(j) Circular

A circular or instructions issued by the Board under section 119(1) of the Act.

(k) Deductions under Chapter VIA

Deductions claimed, if any, under any section included in Chapter VI-A (other than section 80P) under the heading "C.—Deductions in respect of certain incomes".

(l) Deduction u/s 10AA

Deduction claimed under section 10AA of the Act.

(m) Institute

The Institute of Chartered Accountants of India constituted by the Chartered Accountants Act, 1949.

(n) Report

The report of an Accountant which is required to be furnished by the assessee u/s 115JC(3) of the Act.

(o) Rules

The Income-tax Rules, 1962.

(p) SA

Standards on Auditing issued by the Institute of Chartered Accountants of India.

(q) Limited Liability Partnership (LLP)

A Limited Liability partnership as defined in the Limited Liability Partnership Act, 2008.

2. Introduction

2.1 The Limited Liability Partnership Act, 2008, which came into force from 7th January 2009, created a new entity called the LLP (Limited Liability Partnership).

2.2 The Finance Act, 2011 inserted a new Chapter XIIB w.e.f. A. Y. 2012-13 to provide for payment of Alternate Minimum Tax (AMT) by LLPs to

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ensure payment of minimum tax of eighteen and one-half percent of the adjusted total income i.e. total income before deductions under chapter VIA and section 10AA of the Act.

2.3 Section 2(n) of the Limited Liability Partnership Act, 2008 defines LLP as a partnership formed and registered under the LLP Act. Section 2(23) of the Income-tax Act, 1961 defines a firm to include LLP as follows:

"firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009).

Hence, under the Income-tax Act, 1961, a LLP is treated as a partnership firm.

2.4 The Finance Act, 2012 extended the scope of the AMT to all non-corporate assessee claiming deduction under Part C of Chapter VI-A from A. Y. 2013-14. As a result, all non corporate assessee claiming deduction under Part C of Chapter VIA or section 10AA are now covered by the provisions of AMT.

2.5 Section 115JC (1) is the charging section which mandates for payment of AMT at the rate of eighteen and one-half percentage of the adjusted total income. To facilitate the computation of adjusted total income and AMT, section 115JC lays down that an assessee liable to AMT should obtain a report certifying the adjusted total income and the alternate minimum tax duly computed, by an accountant and furnish the report on or before the due date of filing of the return u/s. 139(1).

3. Objective of this Guidance Note

The objective of this guidance note is to provide guidance to the members while discharging their attest function under section 115JC. It intends to:

- (i) explain the relevant provisions of section 115JC and provisions of other related sections for the purposes of certification;
- (ii) explain the requirements of certification;
- (iii) assist in clarifying the respective responsibilities of the non-corporate assessee and the accountant;
- (iv) suggest inquiries that the accountant should make from the assessee;

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- (v) provide guidance on the verification procedure for certification of adjusted total income and the AMT payable thereon as per section 115JC and other particulars in the report;
- (vi) suggest the manner of dealing with certain issues arising in the matter; and
- (vii) suggest the circumstances/manner in which a disclosure may be made or a qualified/adverse certificate may be issued.

4. Applicability of section 115JC

4.1 General

The title of the Chapter XIIB reads "Special provisions relating to certain persons other than a Company".

4.2 Sub-section (1) of section 115JC is the charging section which, begins with the words "Notwithstanding anything contained in this Act ..." indicating that this is a non-obstante clause thereby, mandating the applicability to every assessee which is not a company. Where the regular tax payable by such assessee is less than the alternate minimum tax, the adjusted total income of such assessee shall be deemed to be the total income on which the income tax shall be required to be paid at the rate of eighteen and one-half percent.

4.3 Sub-section (2) of section 115JC defines the term "adjusted total income" as the total income before giving effect to the provisions of Chapter XIIB as increased by:

- (a) deductions under Chapter VIA under the heading "C- Deductions in respect of certain incomes" (other than section 80P), and
- (b) deduction claimed, under section 10AA.

4.4 Section 115JEE which specifically deals with applicability lays down that the provisions of Chapter XIIB shall apply to persons who have claimed deductions under Chapter VIA under the heading "C Deductions in respect of certain incomes" (other than Section 80P) or Section 10AA. The section further provides that the provisions of Chapter XIIB shall not apply, in case of an Individual or Hindu Undivided Family or Association of Person or Body of individuals, whether incorporated or not, or an artificial juridical person specified in section 2(31), where the adjusted total income does not exceed rupees twenty lakhs.

4.5 Since most of the provisions of Part C of Chapter VIA, like sections 80-IA, 80-IB etc. and section 10AA are applicable to profits and gains of business, generally those assesseees who derive income from business would attract the provisions of section 115JC.

4.6 Foreign entities

There is divergence of judicial views on applicability of provisions of section 115JB to foreign companies. LLPs incorporated as body corporate under the law of a foreign country will not fall into the definition of 'firm' as defined u/s 2 (23). Such foreign LLPs will fall into the definition of 'company' u/s. 2(17) (ii). Therefore, provisions of AMT under Chapter XIIBA should not be applicable to such foreign LLPs. Whether provisions of section 115JB will apply to such foreign LLPs will need to be evaluated separately having regard to divergent judicial view. However, foreign partnership firms not incorporated as a body corporate under the law of a foreign country and falling into the definition of term 'firm' as assigned to it in the Indian Partnership Act, 1932 will be considered as firm u/s 2(23) and will be subject to the AMT liability u/s 115JC in respect of its income chargeable to tax in India.

4.7 Presumptive tax provisions vis-à-vis section 115JC

There are special provisions enacted under the head "profits and gains of business or profession" which provide for determination of profits and gains of such business on a presumptive basis. They are sections 44AD, 44AE, 44B, 44BB, 44BBA and 44BBB. Since, section 44AD does not apply to taxpayers claiming profit linked tax holiday, the provisions of section 115JC will also not be applicable on them. The income derived from the sources covered by such presumptive provisions and computed in accordance with such provisions are deemed to be the profits and gains of business. Therefore, the total income shall be computed under the provisions of the Act after taking such presumptive profits and gains into account. If such assesseees are eligible for deductions u/s 10AA or under Chapter VIA then, the total income so computed will form the basis for computing the adjusted total income. If regular tax in such cases is less than AMT then provisions of Chapter XIIBA will be applicable.

5. Application of other provisions of the Act

Section 115JE lays down that all the other provisions of the Act shall apply to a person, except as specifically provided under Chapter XIIBA.

6. Provisions relating to tax credit for AMT

6.1 Section 115JD of the Act provides for tax credit of AMT. It provides that tax credit in respect of a particular assessment year to be allowed shall be the excess of alternate minimum tax paid over the normal tax liability. It further provides that the unavailed tax credit under that section can be claimed for the balance of unexpired period of ten years against excess of normal tax liability over section 115JC tax liability. The other features of the tax credit are:

- (i) no interest shall be payable on the tax credit allowed;
- (ii) maximum period of carry forward is ten years;
- (iii) the tax credit shall be subject to the adjustments in the assessments, as the case may be.

7. Requirement to obtain a report from an Accountant

7.1 Section 115JC (1) is the charging section which mandates for payment of AMT at the rate of eighteen and one -half percentage of the adjusted total income. To facilitate the computation of adjusted total income and AMT, section 115JC lays down that an assessee liable to AMT should obtain a report in a prescribed format from an accountant, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of Chapter XIIBA and furnish the same on or before the due date of filing of the return u/s. 139(1).

7.2 "Accountant" has the same meaning as in the Explanation below section 288(2).

7.3 Sub-section (3) mandates obtaining of a report from an accountant certifying that the adjusted total income and the alternate minimum tax thereon have been computed in accordance with the provisions of Chapter XIIBA. The said report is required to be furnished on or before the due date of furnishing the return of income under section 139(1).

7.4 The provisions of this chapter shall not apply to a person being individuals, HUFs, AOPs and BOIs whose whether incorporated or not or an artificial juridical person, if the adjusted total income of such person does not exceed Rupees twenty lakhs.

8. Requirements to be complied with

8.1 Broadly stated, section 115JC requires a non-corporate assessee to:

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- (i) compute the adjusted total income and the alternate minimum tax thereon; While computing the adjusted total income under section 115JC, the total income computed in the manner laid down in the Act should be increased by the deductions under any section (other than section 80P) included in Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" and; or under section 10AA of the Act.
- (ii) determine the applicability of section 115JC by comparing the regular income-tax payable on the total income computed as per the provisions of the Act by the assessee with the alternate minimum tax; and
- (iii) compliance with the requirements, like obtaining a report from the accountant in prescribed Form No. 29C and furnish the same on or before the due date of filing the return of income under section 139(1).

8.2 The report of the accountant is to be obtained in Form No.29C prescribed under Rule 40BA. Rule 40BA and Form No.29C are given in Appendix-2. Accordingly, the accountant has to:

- (a) certify that the adjusted total income and the alternate minimum tax are computed in accordance with the provisions of the Chapter XII-BA;
- (b) state the amount of tax payable by the assessee under the section;
- (c) certify that the particulars given in Annexure A are true and correct; and
- (d) furnish the details relating to the assessee as well as the information relating to the computation of total income, amount of deduction claimed under any section (other than section 80P) included in "Chapter VI-A under the heading "C.-Deductions in respect of certain incomes", amount of deduction claimed under section 10AA, adjusted total income and alternate minimum tax.

8.3 The primary requirement is the certification to the effect that adjusted total income is computed 'in accordance with' the provisions of Chapter XII-BA. The words 'in accordance with' as interpreted by the Calcutta High Court in *Nav Bharat Vanijya Ltd. [(1980) 123 ITR 865, 869]*, having regard to the dictionary, mean 'in conformity to, or in agreement or harmony with'. In this context, the expression 'in accordance with' means that the accountant has to certify that the computation of adjusted total income is in agreement with

the requirements as specified in the provisions of Chapter XII-BA. He has to verify that all the applicable provisions of the Chapter XII-BA are considered for the purposes of compliance. He should also verify that if any view is taken with respect to the application or non-application of any provision or application of the provision in a particular manner, adequate disclosure in respect thereof is made in the report.

9. Assessee's responsibility

Ensuring compliance of the provisions of section 115JC is primarily the responsibility of the assessee. The non-corporate assessee should prepare statement of its liability under this section duly authenticated, giving details and the basis of all the adjustments made and submit the same to the accountant for verification and certification. The non-corporate assessee should also make available to the accountant all the books of account, records, accountant's report obtained for claiming deduction under Chapter VIA or section 10AA of the Act and other documents as may be deemed necessary by the accountant for the purpose. The assessee is also responsible for providing such information and explanations as may be sought by the accountant for the purposes of reporting in Form No.29C.

10. Accountant's responsibility

10.1 The accountant should have a clear understanding of the scope and nature of the terms of his assignment. It is desirable for him to obtain the terms in writing to avoid any misunderstanding.

10.2 A distinction is made with regard to scope and responsibility in cases where (a) taxpayer's accounts are already audited u/s. 44AB or any other provision by same or other accountant and (b) taxpayer's accounts are not audited under any other provision.

10.3 The first situation is more likely, in as much as many incentive provisions themselves require independent audit of the eligible undertakings. In such cases, the scope may be confined to verification of computation of adjusted total income and claim for deductions based on audited figures subject to checks and balances as per paras 10.8 & 10.9 below.

10.4 The second situation which may be rare may pose challenges for the accountant since he is dealing with unaudited accounts of a non-corporate assessee. This situation may arise in limited number of cases (for e.g. taxpayers claiming deduction u/s. 80JJA, 80QQB, 80RRB where there is no

independent audit requirement and turnover may be below tax audit limit). In such situation, the auditor may verify that prima facie the total income has been computed in accordance with the provisions of the Act. Provisions of section 115JC primarily require computation of the adjusted total income and the alternate minimum tax thereon by making the specified adjustments to the total income of the assessee. Therefore, it is possible for an auditor to take a view that he is not required to conduct audit of books of account and verify whether the total income has been computed truly and correctly or not. He may therefore, confine his verification of the accounts and records to frame his opinion whether the adjusted total income and tax thereon have been computed properly with reference to section 115JC. In the entirely unaudited accounts, he may confine his role only to verification as to whether prima facie the total income has been computed correctly or not. For e.g. in respect of an individual having income from house property, the accountant shall verify the rent from rent receipts, municipal taxes from actual payment receipts, the amount of interest paid on loan taken on house property from interest certificates issued by the banks. However, the accountant is not required to verify the fair rent of the property, where the Annual Value of deemed let out property is to be computed. Likewise, where the assessee has a capital gain on sale of a house property acquired before 01.04.1981, the accountant is not expected to verify the FMV as on 01.04.1981. He may verify that there is a reasonable basis on which such fair market value is considered. The accountant in such cases should clearly bring out the figures which he is unable to verify. Once he is satisfied about such prima facie correctness of the total income he may proceed to verify the correctness of the adjusted total income. However, in case, he is not satisfied about such prima facie correctness of the computation of total income, he may either give a disclaimer of opinion or a qualified report.

10.5 Under either of the above situations, the accountant must disclose his reliance upon other audit reports and the limitation of his verification, as the case may be, in the audit report itself.

10.6 The accountant should verify the statement of computation of tax liability submitted by the non-corporate assessee from the books of account, records, accountant's reports and such other documents of the non-corporate assessee, as he may deem proper. He should note that the Standards on Auditing (SA) as well as "Guidance Note on Audit Reports and Certificates for Special Purposes" issued by the Institute would be applicable to the certification under section 115JC, to the extent relevant. Accordingly, he may also obtain such other information, as he may deem appropriate in the

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form of Management's Representation as mentioned in SA 580.

10.7 As in the case of other professional assignments, the accountant should comply with the "Code of Ethics" issued by the Institute while performing an assignment under the section. The accountant is advised to conduct the assignment under section 115JC in accordance with this guidance note.

10.8 Where the accountant has relied on general purpose financial statements and reports issued by other accountants with respect to deduction claimed under Chapter VIA or section 10AA of the Act which may also include tax audit report under section 44AB he should indicate the extent to which reliance has been placed upon with regard to the matter being reported and the extent to which he has been able to exercise his own professional skill and judgement. For instance, he may state that, for the purpose of forming his opinion on the amount of deduction allowable under any section (except section 80P) of Part – C of Chapter VIA of the Act to be added to total income, he has relied upon a report issued by the other accountant in the matter.

10.9 While computing the adjusted total income many issues may arise on which more than one view is possible. The non-corporate assessee may adopt a particular view while computing the adjusted total income, alternate minimum tax and preparing other particulars. The basic purpose of the report here is the verification and certification of adjusted total income and tax thereon as per section 115JC and not the computation of assessable income of the non-corporate assessee as per the general provisions of the Act. There could be various claims or assertions made by the non-corporate assessee on different items which may include exempt income, adjustment of brought forward depreciation/ business loss, allowability of deduction for a particular expense, computation of deduction claimed under any section included under Chapter VIA, computation of total income, computation of tax payable thereon etc. Where the non-corporate assessee is not required to get its accounts audited under section 44AB of the Act or any one or more of aforementioned items are not covered by the audit report obtained under section 44AB of the Act, then the accountant should examine these issues keeping in mind that the provisions of section 115JC constitute a self contained code for computation of adjusted total income. In case of any contentious issue, where more than one view is possible, wherever the non-corporate assessee places reliance on any judicial precedents or any circulars, the same should be suitably disclosed and where no circulars or

judicial precedents are available, the basis of view taken by the non-corporate assessee should be suitably disclosed.

10.10 The non-corporate assessee has to furnish the report on or before the due date of filing the return of income under section 139(1) of the Act. Accordingly, once the requirements of para 9 are complied by the non-corporate assessee and the required particulars are made available to the accountant, he should make his report available to the non-corporate assessee on or before the due date for filing the return of income.

11. Report under section 115JC

11.1 The report consists of three paragraphs:

- (a) The first paragraph contains the declaration about the examination of the accounts and records of the non-corporate assessee in order to arrive at the adjusted total income and the alternate minimum tax thereon.
- (b) The second paragraph involves certification of computation of adjusted total income and alternate minimum tax in accordance with provisions of Chapter XII-BA and the quantification of the tax payable under section 115JC on the basis of the details furnished in Annexure A.
- (c) The last paragraph requires expression of the opinion that the particulars given in Annexure A are true and correct.

The adjusted total income and the tax payable under section 115JC are to be determined on the basis of the details given in the Annexure A. The particulars required as per the Annexure A should be obtained by the accountant from the non-corporate assessee based on which, computation of adjusted total income can be made. As has been stated earlier, the onus of preparing and authenticating such particulars primarily lies on the non-corporate assessee.

11.2 For the purpose of giving his report, the accountant may have to examine the requirement of information and documents having regard to the facts and circumstances of each case. He may have to examine the following information and documents, which are only illustrative:

- (a) the Statement of Account (which include Statement of Assets and Liabilities and Statement of Income and Expenditure) prepared by the LLP as per the provisions of section 34 of the LLP Act, 2008 or the

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- financial statements prepared by any other non-corporate assessee as per applicable laws;
- (b) the auditor's report on such Statement of Account of the LLP if any;
- (c) a certified copy of the computation of total income (as per the provisions of the Act);
- (d) a copy of the audit report under section 44AB of the Act of the non-corporate assessee, if any;
- (e) a copy of the certificate or report, if any, obtained under the provisions of sections 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE, 80-JJA, 80-JJAA, 80-LA, 80-QQB and 80-RRB;
- (f) a copy of the audited accounts and report in respect of undertakings referred to in section 10AA;
- (g) such other documents and papers as may be necessary or relevant for the purpose of verification of books of account and various adjustments required for computing total income;
- (h) representations from the management about
 - (i) application of accounting standards;
 - (ii) accounting policies adopted;
 - (iii) method and rate of depreciation applied;
 - (iv) computation of total income.

For the purposes of his report, it may also be necessary for the accountant to examine the books of account and records having due regard to the various adjustments relating to the total income and adjusted total income.

11.3 Broadly stated, it would be necessary for the accountant to examine whether

- (a) the profit and loss account has been prepared in accordance with accounting standards and accounting policies issued by the Institute;
- (b) the statutory adjustments required for the purpose of computing the total income in accordance with the provisions of the Act have been so made;
- (c) the items for which appropriate disclosures are required and the mode and manner in which they should be disclosed have been so disclosed.

11.4 As mentioned earlier, while preparing the report, the guidance given in "Guidance on Audit Report and Certificate for Special purposes" must be kept in mind. The Guidance Note makes various suggestions about the procedure as well as the mode and manner of reporting including the contents thereof.

12. Examination of accounts and records

I/We* have examined the accounts and records of(name and address of the assessee with PAN) engaged in the business of(nature of business) in order to arrive at the adjusted total income and the alternate minimum tax for the year ended on the 31st March,

[Paragraph 1]

12.1 The expression "accounts and records" appearing in the audit report should normally refer to those accounts and records which are to be examined for the purpose of arriving at the adjusted total income for the relevant previous year. In this context, "accounts and records", primarily, could mean the Statement of Account (which includes Statement of Assets and Liabilities and Statement of Income and Expenditure) in case of LLP as per the provisions of section 34 of the LLP Act, 2008 and the profit and loss account and balance sheet as prepared by non-corporate assessees (other than LLP) for the purpose of audit under section 44AB of the Act or under any other law of India and all supporting statements, records, books, etc. The examination of the accounts and records would depend on the facts and the circumstances of each case.

12.2 Since the report requires certification of the computation of adjusted total income in accordance with the provisions of Chapter XII-BA, the accountant has to examine the accounts and records of the non-corporate assessee. The scope of verification shall be confined to matters necessary for verifying the components of adjusted total income and for determination of the extent of adjustments called for. In conducting the examination and verification, the accountant will have to use his professional skill and expertise and apply such tests as the circumstances of the case may require. The accountant will also have to keep in mind the concept of materiality depending on the circumstances of each case. He would be well advised to refer SAs as well as the guidance notes issued by Institute. The "Guidance Note on Audit Reports and Certificates for Special Purposes" deserves a special reference. The accountant would be well advised to so design the

verification programme as would reveal the extent of examination and to ensure adequate documentation in support of the information being certified.

12.3 As section 115JC is applicable to non-corporate assessees, in majority of cases the statutory audit under LLP Act, 2008 (in case of non-corporate assessee being LLP) and/or the tax audit under section 44AB of the Act (for other non-corporate assessees), would have been completed before the accountant is asked to give his report under this section. The accountant may rely on these audit reports to such extent and in such manner as provided in various SAAs issued by ICAI from time to time. The SA on Basic Principles Governing an Audit [SA 200] issued by ICAI states:

"Where the auditor delegates work to assistants or uses work performed by other auditors and experts, he will continue to be responsible for forming and expressing his own opinion on the financial information. However, he will be entitled to rely on the work performed by others, provided he exercises adequate skill and care and is not aware of any reason to believe that he should not have so relied" [emphasis added].

12.4 In a case when the accounts of the non-corporate assessee are not required to be audited under section 44AB of the Act or under any other laws of India or in case where LLP is not required to get its accounts audited under section 34 of the LLP Act, 2008 and the accountant is called upon to give his report under section 115JC, the accountant should proceed with caution.

12.5 As per section 34 of the LLP Act, 2008, accounts are to be audited as per the rules prescribed. As per the LLP Rules, 2009, a LLP whose turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty-five lakh rupees shall not be required to get its accounts audited. Similarly, non-corporate assessees (other than LLP) are required to get their accounts audited under section 44AB of the Act if the total sales, turnover or gross receipts in the business carried on by them exceeds the prescribed limit (Presently Rs. 1 crore w.e.f. 1-4-2013) in any previous year or if the gross receipts in the profession carried on by them exceeds the prescribed limit (Presently Rs. 25 Lakhs w.e.f. 1-4-2013). Thus, for the non-corporate assessees who do not fall under the above categories are not required to get their accounts audited under any of the provisions. As the threshold for audit under the LLP Act and under section 44AB may change from time to time, therefore the non corporate assessee as well as the auditor for the purpose of section 115JC would have to consider the

provisions as may be prevailing in relation to the previous year for which he is to report u/s. 115JC.

12.6 In such cases, the accountant will himself have to conduct all such examination and review which he considers necessary and sufficient for issuing the report as per Form No.29C. As abundant precaution, he should get the annual accounts of the non-corporate assessee duly authenticated by the Karta in case of HUF, by a working partner in case of a firm, by all the designated partners in case of LLP, by all the members of AOP/BOI. The scope of review and examination in such circumstances would be extended. Further, the accountant should disclose the fact that accounts submitted for verification and examination are not audited either under the Act or any other law requiring audit for the time being in force.

12.7 With regard to the nature of business, the principal line of business should be stated. In the case of an assessee rendering services, the nature of services should be broadly stated. The information to be given about the nature of business in the report is similar to the information called for in the return of income "Part IV, information relevant to the business or profession" where an assessee is required to state the nature of business or profession. The accountant may verify this information from clause 8(a) of Form No.3CD (being the form of particulars prescribed for the purpose of tax audit under section 44AB of the Act) wherever applicable.

13. Particulars to be furnished in Annexure A to Form No. 29C

13.1 Columns 1 to 4

- 1. Name of the assessee**
- 2. Address of Assessee**
- 3. Permanent Account Number**
- 4. Assessment year**

The name, address and permanent account number as obtained from the assessee shall be mentioned against columns 1, 2 and 3 respectively in Annexure A. The address to be mentioned should be the same as has been communicated by the assessee to the Income-tax Department for assessment purposes as on the date of the signing of the report. The assessment year relevant to the previous year for which the report under section 115JC is being prepared should be mentioned against column 4.

13.2 *Column 5-Total income of the Assessee under the Income-tax Act*

Total income, as declared and certified by the assessee under the Income-tax Act, is required to be given against column 5 of the Annexure A. The amount disclosed as total income should be the same which is determined for being furnished in the return of income for regular assessment. As already explained, the statement of total income is to be prepared and authenticated by the assessee on which the accountant can place reliance. Further, the accountant should state clearly in the report as well as in Annexure A that the total income as given in the report and the Annexure is as computed by the assessee.

13.3 *Column 6- Income-tax payable on total income*

The income-tax payable on the total income furnished against column 5 shall be mentioned against column 6. A question may arise whether the income-tax to be mentioned is inclusive of surcharge or exclusive of the same. It may be noted that the section deals with only income tax payable. The term only "tax" and not "income tax" is defined under clause (43) of section 2 of the Act. As such, there is a difference between income tax and tax (may also be termed as "total tax") payable. The Finance Act provides that the "income-tax" shall be increased by "surcharge" implying thereby that "income-tax" does not include surcharge. Therefore, it may be said that what is required to be considered under column 6 is the income tax before levy of surcharge. Besides, the income-tax payable mentioned against column 6 is required to be compared with 18.5 per cent of adjusted total income as per column 10 of the Annexure. The said 18.5 per cent does not encompass levy of surcharge and therefore the income-tax on total income in column 6 should also not include surcharge for comparison. It requires to be mentioned here that ultimately surcharge as applicable shall be added to the income-tax payable by the company as determined after the said comparison under column 10 of the Annexure. If a contrary view is taken to the effect that income-tax includes surcharge, then surcharge should be added both for column 6 as well as for column 10 before comparison.

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13.4 Column 7 & 8 - Deductions claimed under section heading C of Chapter VI (other than 80P) and deduction claimed under section 10AA

<i>7. The amount of deduction claimed under any section included in Chapter VI-A under the heading "C. – Deductions in respect of certain incomes"</i>	<i>Sl. No.</i>	<i>Section under which deduction claimed</i>	<i>Amount of deduction claimed</i>

<i>8. The amount of deduction claimed u/s 10AA</i>	
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The primary responsibility of computing the deductions under Sections. 80IA, 80IAB, 80IB, 80IC, 80ID, 80IE, 80JJA, 80JJAA, 80QQB, 80RRB is that of the assessee. The Incentive/deductions under the Act are very stringent with various conditions and specifications of requirements. The sole responsibility of meeting to those conditions and specifications is that of the assessee. Verification role as to whether the assessee has adequately complied with the various conditions and specifications is that of the Assessing Officer. The Accountant has to review the truth and correctness of the deductions claimed. An Accountant does not have expert knowledge of fiscal law or fiscal economics, he only has reasonable working knowledge on the provisions of Income-tax Act and Rules. If, on any particular issue there are differing views then, a disclosure on the same should be furnished as a note in the Annexure.

13.5 Column 9- Adjusted Total Income of the assessee (5+7+8)

The Adjusted total Income is a simple summation of column 5+7+8 Q.E.D.

13.6 Column 10 - Alternate Minimum Tax (18.5% of adjusted total income computed in column 9 above)

Where the amount of income-tax payable on total income indicated against column 6 is more than 18.5% furnished against column 10, 18.5% of adjusted total income being lower than income tax payable on total income, AMT is considered "not applicable (N.A.)" should be filled in against column

Guidance Note on Report under Section 115JC of the Income-tax Act, 1961

10. On the other hand, if income-tax payable on total income indicated against column 6 is less than 18.5% of adjusted total income furnished against column 9, 18.5% of adjusted total income should be mentioned against column 10. If cess is applicable for the relevant assessment year, then the amount mentioned against column 10 shall be increased by the cess. The Accountant should verify the same accordingly.

Appendix - 1

Statutory Provisions

1. INCOME TAX ACT, 1961

CHAPTER XII-BA- SPECIAL PROVISIONS RELATING TO CERTAIN LIMITED LIABILITY PARTNERSHIPS

Special provisions for payment of tax by certain limited liability partnerships

115JC. (1) Notwithstanding anything contained in this Act, where the regular income-tax payable for a previous year by a limited liability partnership is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of the limited liability partnership for such previous year and it shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

(2) Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by—

(i) deductions claimed, if any, under any section included in Chapter VI-A under the heading "C.—Deductions in respect of certain incomes"; and

(ii) deduction claimed, if any, under section 10AA.

(3) Every limited liability partnership to which this section applies shall obtain a report, in such form as may be prescribed, from an accountant certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of filing of return under sub-section (1) of section 139.

The following section 115JC shall be substituted for the existing section 115JC by the Finance Act, 2012, w.e.f. 1-4-2013:

Special provisions for payment of tax by certain persons other than a company

115JC. (1) Notwithstanding anything contained in this Act, where the regular income-tax payable for a previous year by a person, other than a company, is less than the alternate minimum tax payable for such previous year, the

Guidance Note on Report under Section 115JC of the Income-tax Act, 1961

adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

(2) Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by—

(i) deductions claimed, if any, under any section (other than section 80P) included in Chapter VI-A under the heading "C.—Deductions in respect of certain incomes"; and

(ii) deduction claimed, if any, under section 10AA.

(3) Every person to whom this section applies shall obtain a report, in such form as may be prescribed, from an accountant, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of furnishing of return of income under sub-section (1) of section 139.

Tax credit for alternate minimum tax

115JD. *(1) The credit for tax paid by a limited liability partnership under section 115JC shall be allowed to it] in accordance with the provisions of this section.*

(2) The tax credit of an assessment year to be allowed under sub-section (1) shall be the excess of alternate minimum tax paid over the regular income-tax payable of that year.

(3) No interest shall be payable on tax credit allowed under sub-section (1).

(4) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (5) and (6) but such carry forward shall not be allowed beyond the tenth assessment year immediately succeeding the assessment year for which tax credit becomes allowable under sub-section (1).

(5) In any assessment year in which the regular income-tax exceeds the alternate minimum tax, the tax credit shall be allowed to be set off to the extent of the excess of regular income-tax over the alternate minimum tax and the balance of the tax credit, if any, shall be carried forward.

(6) If the amount of regular income-tax or the alternate minimum tax is reduced or increased as a result of any order passed under this Act, the

amount of tax credit allowed under this section shall also be varied accordingly.

Application of other provisions of this Act

115JE. *Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to a limited liability partnership referred to in this Chapter.*

The following section 115JEE shall be inserted after section 115JE by the Finance Act, 2012, w.e.f. 1-4-2013:

Application of this Chapter to certain persons

115JEE. *(1) The provisions of this Chapter shall apply to a person who has claimed any deduction under—*

- (a) any section (other than section 80P) included in Chapter VI-A under the heading "C.—Deductions in respect of certain incomes"; or*
- (b) section 10AA.*

(2) The provisions of this Chapter shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2, if the adjusted total income of such person does not exceed twenty lakh rupees.

Interpretation in this Chapter

115JF. *In this Chapter—*

- (a) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;*
- (b) "alternate minimum tax" means the amount of tax computed on adjusted total income at a rate of eighteen and one-half per cent;*
- (c)² "limited liability partnership" shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009);*
- (d) "regular income-tax" means the income-tax payable for a previous year by a limited liability partnership on its total income in accordance with the provisions of this Act other than the provisions of this Chapter.*

2. FINANCE MINISTER'S SPEECH

The following is the relevant portion of the speech of the Finance Minister when he introduced the:

a. Finance Bill, 2012

In order to moderate the outgo on profit linked deductions, I propose to extend the levy of Alternate Minimum Tax (AMT) on all persons other than companies, claiming profit linked deductions.

3. MEMORANDUM EXPLAINING TO PROVISIONS OF

a. Finance Bill, 2011

Clause 18 of the Bill seeks to insert a new Chapter XII-BA (consisting of new sections 115JC, 115JD, 115JE and 115JF) in the Income-tax Act containing special provisions relating to certain limited liability partnerships.

The proposed new section 115JC provides that every limited liability partnership to which that section applies shall obtain a report, in such form as may be prescribed from an accountant certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of filing of return under sub-section (1) of section 139.

b. Finance Bill, 2012

ALTERNATE MINIMUM TAX (AMT) ON ALL PERSONS OTHER THAN COMPANIES

Under the existing provisions of the Income-tax Act, Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT) are levied on companies and limited liability partnerships (LLPs) respectively. However, no such tax is levied on the other form of business organisations such as partnership firms, sole proprietorship, association of persons, etc.

In order to widen the tax base vis-à-vis profit linked deductions, it is proposed to amend provisions regarding AMT contained in Chapter XII-BA in the Income-tax Act to provide that a person other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VI-A under the heading "C - Deductions in respect of certain incomes" or under section 10AA, shall be liable to pay AMT.

Under the proposed amendments, where the regular income-tax payable for a previous year by a person (other than a company) is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such person and he shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

For the purpose of the above,

- (i) "adjusted total income" shall be the total income before giving effect to provisions of Chapter XII-BA as increased by the deductions claimed under any section (other than section 80P) included in Chapter VI-A under the heading "C - Deductions in respect of certain incomes" and deduction claimed under section 10AA;*
- (ii) "alternate minimum tax:" shall be the amount of tax computed on adjusted total income at a rate of eighteen and one-half per cent; and*
- (iii) "regular income-tax" shall be the income-tax payable for a previous year by a person other than a company on his total income in accordance with the provisions of the Act other than the provisions of Chapter XII-BA.*

It is further provided that the provisions of AMT under Chapter XII-BA shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person referred to in section 2(31)(vii) if the adjusted total income of such person does not exceed twenty lakh rupees.

It is also provided that the credit for tax (tax credit) paid by a person on account of AMT under Chapter XII-BA shall be allowed to the extent of the excess of the AMT paid over the regular income-tax. This tax credit shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such credit becomes allowable. It shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the AMT to the extent of the excess of the regular income-tax over the AMT.

Consequential amendments are also proposed to the provisions of section 140A relating to self-assessment, section 234A relating to interest for defaults in furnishing return of income, section 234B relating to interest for defaults in payment of advance tax and section 234C relating to interest for deferment of advance tax.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Appendix - 2

Relevant Rules and Forms

As envisaged under sub-section (4) of section 115JC, a report shall be furnished in the prescribed form. For this purpose, the Board has framed Rule 40BA in the Income-tax Rules, 1962 and has prescribed Form No.29C.

Prescribed Rule

"PART VIIB

40BA. Special provision for payment of tax by certain persons other than a company

The report of an Accountant which is required to be furnished by the assessee under sub-section (3) of section 115JC, shall be in Form No. 29C.

FORM NO. 29C

[See rule 40BA]

Report under section 115JC of the Income-tax Act, 1961 for computing Adjusted Total Income and Alternate Minimum Tax of the person other than a company

1. I/We* have examined the accounts and records of (name and address of the assessee with PAN) engaged in business of (nature of business) in order to arrive at the adjusted total income and the alternate minimum tax for the year ended on the 31st March,

2(a) I/We* certify that the adjusted total income and the alternate minimum tax has been computed in accordance with the provisions of Chapter XII-BA of the Income-tax Act. The tax payable under section 115JC of the Income-tax Act in respect of the assessment year..... is Rs....., which has been determined on the basis of the details in Annexure A to this Form.

Appendices

3. In my/our* opinion and to the best of my/our* knowledge and according to the explanations given to me/us* the particulars given in the Annexure A are true and correct.

(Signature and Stamp/ Seal of the Signatory)

†Accountant

Date:

Name of the Signatory:

Place:

Full Address:

Membership No:

Notes:

1. *Delete whichever is not applicable.
2. †This report is to be given by-
 - (i) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
 - (ii) any person, who in relation to any State, is, by virtue of the provisions in sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), entitled to be appointed to act as an auditor of companies registered in that State.
3. Where any of the matter stated in this report is answered in the negative or with a qualification, the report shall state the reasons therefor.

Guidance Note on Report under Section 115JC of the Income-tax Act, 1961

ANNEXURE A
[See paragraph 2]

Details relating to the computation of Adjusted Total Income and Alternate Minimum Tax for the purposes of section 115JC of the Income-tax Act, 1961

1.	Name of the assessee			
2.	Address of assessee			
3.	Permanent Account Number			
4.	Assessment year			
5.	Total income of the assessee computed in the manner laid down in the Income-tax Act before giving effect to Chapter XII-BA of the Income-tax Act, 1961(43 of 1961)			
6.	Income-tax payable on total income referred to in Column 5 above			
7.	The amount of deduction claimed under any section (other than section 80P) included in "Chapter VI-A under the heading "C. - Deductions in respect of certain incomes"	<i>Sl. No.</i>	<i>Section under which deduction claimed</i>	<i>Amount of deduction claimed</i>
8.	The amount of deduction claimed under section 10AA			
9.	Adjusted total income of the assessee (5+7+8)			
10.	Minimum alternate tax (18.5% of adjusted total income computed in column 9 above).			