

Tax Rate Changes for Domestic Companies

Income Tax Act, 1961, as amended from time to time, has provided for tax rates applicable to the companies. From viewpoint of tax rate, the companies be classified into ‘domestic company¹’ and ‘foreign company²’.

In this article we analyse the rate of income tax payable by ‘domestic company’ in light of changes brought into Taxation Laws (Amendment) Ordinance 2019.

History of Rate Cuts:

Normally, a ‘domestic company’ is subject to tax @ 30%³ on total income under ITA. While presenting Budget in 2015, the Honourable Finance Minister in his speech has made proposal to reduce the rate of corporate tax from 30% to 25% over next four years. This rate reduction comes with a condition of elimination of exemptions or accelerated deductions available under various sections.

Finance Act, 2016 has introduced two changes in the corporate income taxes. One being introduction of Section 115AB which provides for taxation of ‘domestic company’ engaged in manufacturing @ 25% in the absence of certain deductions⁴ available under the Act. Second change being charge of tax @ 29% for companies having turnover not exceeding Rs. 5 Crores during the Financial Year (FY) 2014-15.

Finance Act, 2017 has introduced tax rate of 25% for ‘domestic company’ having turnover not exceeding Rs. 50 Crores during the FY 2015-16.

Finance Act, 2018 has extended the benefit of concessional rate of tax of 25% to the ‘domestic company’ having turnover not exceeding Rs. 250 Crores during the FY 2016-17.

Finance Act, 2019 has further extended the benefit of concessional rate of tax of 25% to the ‘domestic company’ having turnover not exceeding Rs. 400 Crores during the FY 2017-18.

In nutshell:

| Source | Rate of Tax | Nature | Conditions |
|-----------------|-------------|-----------|---|
| FA, 16 | 29% | Mandatory | Turnover for FY 14-15 do not exceed INR 5 Crores |
| FA, 16 | 25% | Optional | Only for new manufacturing company as stated above |
| FA, 17 | 25% | Mandatory | Turnover for FY 15-16 do not exceed INR 50 Crores |
| FA, 18 | 25% | Mandatory | Turnover for FY 16-17 do not exceed INR 250 Crores |
| FA, (No 2) 2019 | 25% | Mandatory | Turnover for FY 17-18 do not exceed INR 400 Crores |

¹ Sec 2(22A) of Income Tax Act, 1961 (ITA) defines, the ‘domestic company’ as ‘Indian company or other company, which in respect of its income is liable to tax under this Act, has made prescribed arrangement for declaration and payment, within India of the dividends, including on preference shares, payable out such income’.

² Sec 2(23A) of ITA defines ‘foreign company’ to mean a company which is not a ‘domestic company’.

³ For easy of understanding, only tax rates are specified, reader has to add surcharge and cess to arrive at final rate.

⁴ Ref Annexure

For other domestic companies the rate of tax continues to be 30% (i.e., where turnover exceeds the prescribed limits) plus surcharge and cess as applicable.

Surcharge:

In addition to tax, surcharge is levied on income tax. It is levied @ 7% on tax, when the total income exceeds INR 1 Crore but does not exceed INR 10 Crores and @ 12% when total income exceeds INR 10 Crores.

Taxation Laws (Amendment) Ordinance 2019:

In order to promote growth and investment few changes inter-alia are proposed in ITA, particularly in relation to rate of tax for ‘domestic company’.

Through this Ordinance change(s) is proposed⁵ to the existing Section 115BA besides insertion of two new sections namely Section 115BAA and Section 115BAB.

Changes proposed (Other than MAT⁶ related) through Ordinance is summarised as follows:

| Section | Status | Change Proposed | Conditions |
|---------|------------------|--|--|
| 115BA | Existing Section | Once option under Section 115BAA is exercised, the option of paying tax @ 25% under this section may be withdrawn. | <ul style="list-style-type: none"> The option to apply provisions of Section 115BAA be exercised in the prescribed manner on or before the due date specified under Section 139(1) for any previous year relevant to the assessment year 2020-2021. |
| 115BAA | New Section | At the option of the domestic company, tax on total income be computed @ 22%. | <ul style="list-style-type: none"> The option to apply provisions of Section 115BAA be exercised in the prescribed manner on or before the due date specified under Section 139(1) for any previous year relevant to the assessment year 2020-2021; Certain Deductions and as well set off of brought forward losses attributable to such deductions are not allowed⁷. However, normal depreciation and deduction under Section 80JJAA are allowed; |

⁵ W.e.f 01/04/2020

⁶ Minimum Alternative Tax as referred to in Sec 115JB

⁷ Ref Annexure

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|--------|-------------|--|---|
| | | | <ul style="list-style-type: none"> Once the Option is exercised the same cannot be withdrawn. |
| 115BAB | New Section | At the option of the domestic company, tax on total income be computed @15%. | <ul style="list-style-type: none"> A new domestic company set up and registered on or after 01/10/2019 and commenced manufacturing activity on or before 31/03/2023; Company should be engaged in the business of manufacturing or producing an article or thing and research in relation to or distribution of article manufactured or produced by it; The company should not be formed by splitting up or reconstruction of business already in existence; Does not use any pre used plant and machinery subject to cap of 20% of total value of plant and machinery. However, imported pre used Plant and Machinery is allowed without limit of 20% subject to satisfaction of certain conditions; Does not use any building previously used as a hotel or convention centre as defined under Section 80-ID; Certain Deductions and as well set off of brought forward losses attributable to such deductions are not allowed⁸. However, normal depreciation and deduction under Section 80JJAA are allowed; Provisions of Section 92BA will apply and profits be computed having regard to Arm's Length Price referred to in Section 92F. |

⁸ Ref Annexure

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|--|--|--|--|
| | | | <ul style="list-style-type: none"> • The Option to apply provisions of Section 115BAB be exercised in the prescribed manner on or before the due date specified under Section 139(1) for any previous year relevant to the assessment year 2020-2021. |
|--|--|--|--|

Surcharge:

The 'domestic company' exercising the option provided in Section 115BAA or 115BAB is subject to surcharge of 10% on income tax. 'domestic company' which exercised the option under Section 115BA is subjected to surcharge normally applicable (as stated supra).

MAT (Sec 115JB):

As per Section 115JB(5A), from Assessment Year 2020-21, the provisions of Section 115JB are not applicable to 'domestic company' exercising option under Section 115BAA or Section 115BAB

Further, as per Section 115JB(1), the tax rate for the purpose of application of provisions of Section 115JB is reduced to 15% on the amount of book profits.

MAT Credit (Sec 115JAA):

Sec 115JAA(2A) provides that where tax is paid under Section 115JB, credit for the tax so paid to the extent of difference between tax paid under Section 115JB and amount of tax payable on the total income be allowed. The amount of tax credit shall be carried forward up to 15th assessment year succeeding the assessment year in which tax credit is available.

The said tax credit shall be allowed to be set-off in the year when tax becomes payable on the total income computed under the Act to the extent of difference between tax on total income and tax payable under Section 115JB.

No changes are proposed to Section 115JAA in the ordinance. However, Central Board of Direct Taxes vide circular 29/2019 dated 02-10-2019 has clarified that '*as the provisions of section 115JB relating to MAT itself shall not be applicable to the domestic company which exercises option under section 115BAA, it is hereby clarified that the tax credit of MAT paid by the domestic company exercising option under section 115BAA of the Act shall not be available consequent to exercising of such option*'.

As per AS 22 'Taxes on Income' when a company is liable to pay tax under Section 115JB it is to be shown as current tax at gross amount. The MAT credit, to the extent of difference between tax paid under Section 115JB and tax payable on total income, is shown as an asset by crediting to profit and loss account⁹.

From above mentioned circular it could be inferred that MAT credit shown as an asset in the balance sheet of the domestic company exercising the option under Section 115BAA has to relinquish the same.

⁹ GN on Accounting for Credit Available in respect of MAT under Income Tax Act, 1961 issued by ICAI

Conclusion:

The ordinance has brought a significant change in rate at which 'domestic company' be taxed. Some ambiguities still persist particularly in respect of treatment of MAT credit on exercising the option of low tax regime. Though the CBDT circular has clarified the fact that MAT credit cannot be adjusted against the tax liability while applying the new provisions of Sec 115BAB/115BAA but allowability or otherwise of the deduction on writing off of MAT credit existing in the books of account is unanswered.

ANNEXURE:

Specific Deductions not allowed when opted for sec 115BAB/115BAA: -

- Sec 10AA
- Sec 32(1)(ia)
- Sec 32AD;
- Sec 33AB;
- Sec ABA;
- Sec 35(1)(ii);
- Sec 35(1)(ia);
- Sec 35(1)(iii);
- Sec 35(2AA);
- Sec 35(2AB);
- Sec 35AD;
- Sec 35CCC;
- Sec 35CCD;
- Part C of Chapter VI-A except 80JJAA
 - Sec 80HH to 80 RRB