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Taxation
Updates

Newsletter

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THE NEW CORPORATE TAX SCHEME

With economic growth slumping to a six-year low in the first quarter of the current financial year, steps to revive the economy, spur investment and boost job creation had become crucial. As a result, the government came up with an ordinance dated September 20, 2019 which provides an option to domestic companies to pay income tax without any exemption/incentive at a reduced effective rate of 25.17% for existing and 17.16 % for new manufacturing companies. Also, such companies shall not be required to pay Minimum Alternate Tax (MAT). Further, in order to provide relief to companies that continue to avail exemptions/incentives, the rate of Minimum Alternate Tax has been reduced from existing 18.5% to 15%. The latest scheme has made the country one of the lowest tax jurisdictions in South and Southeast Asia. The move is in line with India's eagerness to draw in manufacturing entities that are looking to diversify their production out of China.

The new scheme is applicable to contract manufacturing units. Although the ordinance does not define 'manufacturing' as applicable to the entities affected by the provision, Supreme Court judgments providing guidance on the subject shall prevail. The Apex Court has laid down that 'manufacturing' means a change bringing into existence a new and distinct object or article or thing with a different chemical composition or integral structure. Further, the latest provision makes it clear that only new manufacturing companies would be eligible for the new rate and entities formed by splitting up or reconstruction of a business already in existence are excluded.

The ordinance has added the following sections to the Income Tax Act, 1961:

Section 115BAA

- Any domestic company has an option to pay tax at 22%, subject to the following conditions: − The total income is computed without claiming prescribed deductions or set-off of loss [See Table on Page 4 for the computation mechanism]. − The option needs to be exercised within the prescribed time for filing the return of income (ROI) under section 139(1) of the Act for any previous year (PY) relevant to the assessment year (AY) 2020-21.
- Once exercised, such an option cannot be withdrawn for the same or subsequent AYs. (with effect from AY 2020-21)

Section 115BAB

Which companies are covered by section 115BAB?

A domestic company satisfying the specified conditions mentioned in the query below can claim the benefit of section 115BAB. Domestic company includes a company formed and registered in India. The benefit is available from the financial year 2019-20 (AY 2020-21).

How to avail the benefit of a low corporate tax rate?

A domestic company will be entitled to the benefit of low corporate tax rate if it satisfies the following conditions:

- The company has been set up and registered on or after 1 October 2019 and has commenced manufacturing on or before 31 March 2023. Such a company should:
  - Not be formed by the splitting up and reconstruction of a business already in existence except in case of a business re-established under section 33B.
  - Does not use any plant or machinery previously used for any purpose. However, the company can use plant and machinery used outside India and used in India for the first time. Also, the company can use old plant and machinery, the value of which does not exceed 20% of the total value of the plant and machinery used by the company.
  - Does not use a building previously used as a hotel or a convention center. 'Hotel' means a hotel of two-star, three-star or four-star categories as classified by the Central Government. 'Convention center' means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed.
- The company should be engaged in the business of manufacture or production of any article or thing, and research in relation to such article or thing. The company can also be engaged in the distribution of such article or thing manufactured or produced by it.
- The company should be a domestic manufacturing company, and the total income should be computed without any deductions under the following sections:

  - Section 10AA of the Act relating to SEZ.
  - Additional depreciation allowance under section 32(1) (iia) of the Act.
  - Section 32AD of the Act – Deduction for investment in new plant and machinery in notified backward States.
  - Section 33AB of the Act – Tea/ coffee/ rubber development allowance.
  - Section 33ABA of the Act – Site restoration fund.
  - Sections 35(1) (ii), (iia), (iii) and 35(2AA), (2AB) of the Act – certain scientific research expenditure. − Section 35AD of the Act – Deduction in respect of expenditure on specified business.
  - Section 35CCC of the Act – Expenditure on agricultural extension project.
  - Section 35CCD of the Act – Expenditure on skill development project.
  - Deduction under Part C of Chapter VIA other than section 80JJAA of the Act (deduction in respect of employment of new employees).
  - Without a set-off of any loss carried forward from an earlier year to the extent that such loss is attributable to any of the deduction mentioned above. However, it would be deemed that the full effect of the loss has already been given and no further deduction would be allowed for such loss in the future.
  - By claiming depreciation other than additional depreciation under section 32(1)(iia) of the Act determined in such manner as may be prescribed.

Can a corporate taxpayer opt for section 115BAB?

A new manufacturing company can exercise the option to be taxed under section 115BAB. The company has to exercise the option on or before the due date of filing income tax returns i.e usually 30th September of the assessment year. Once the company opts for section 115BAB in a particular financial year, it cannot be withdrawn subsequently.

What is the tax liability under section 115BAB?

The new effective tax rate, which will apply to domestic companies availing the benefit of section 115BAA is 17.16%. The break-up of such tax rate is as follows:

Base tax rate	**15%**
Surcharge applicable	**10%**
Cess	**4%**
Effective tax rate	**15*1.1*1.04 = 17.16%**

Such companies will not be required to pay minimum alternate tax (MAT) under section 115JB of the act

What is the meaning of a domestic company?

Domestic company includes a company formed and registered in India. The benefit is available from the financial year 2019-20 (AY 2020-21)

What is the requirement under section 33B?

The company should not have been formed on a business that exists already or by splitting up.

Existing Tax System:

Particulars	Large domestic co./LLP	Small domestic co.	Sec 115BA – New domestic co. setup on or after 1st March 2016	Foreign co.
Base tax rate	30%	25%	25%	40%
Maximum effective tax	34.94%	29.12%	29.12%	43.68%
Availability of exemption/incentive	Yes	Yes	No	Yes
Depreciation benefit	Yes	Yes	Yes, without additional depreciation	Yes
Setoff and carry forward of losses	Yes	Yes	Yes, except losses pertaining to exemptions, incentives and additional depreciation	Yes

Small domestic companies: Where turnover doesn't exceed 400 crores in FY 17-18 Cos. are subject to DDT for distribution of profits whereas LLPs are not.

Parameters	115BAA	115BAB
Effective Tax rate	25.17%	17.16%
Existing or New Domestic Co.	Applicable to all existing as well as new domestic companies	New domestic manufacturing companies set up on or after 1st October 2019 and commencing manufacturing by 31st March 2023
Nature of Industry	No Restriction	Companies engaged solely in manufacturing /production /and related research and development
Condition	No Condition	Not to be formed by split-up or reconstruction of existing unit Second-hand plant and machinery not more than 20% of total assets.
MAT Applicability	Not Applicable	Applicable
Specified Domestic transactions	Not Applicable	Applicable

Additional Considerations:

- MAT is not applicable for entities opting for 115BAB and 115BAA.
- No MAT credit if the company opts for 22% tax scheme i.e. section 115BAA, the question of credit does not arise for a company opting for 15% tax scheme as they are new entities.
- No carry forward of unabsorbed additional depreciation.
- The surcharge rate for incomes chargeable to tax under sections 115BAA or 115BAB of the Act would be at 10%.

Impact:

- Companies with large MAT credit and SEZ units would be hit.
- Companies will rethink plans to shift to the new regime due to the unabsorbed MAT credit.
- Those with large depreciation in their books would exhaust it before switching.

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