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# Analysis of Sec 115BAA of the Income Tax Act

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on 17 October 2019

## Introduction:

With the introduction of sec 115BAA, domestic companies who are paying tax at the rate of 25% (or 30%) now have an option to pay tax at a lower rate through sec 115BAA. Any person who had opted for sec 115BAA being a domestic company will pay tax at the rate of 22% on its total income irrespective of its turnover during the previous year. A rate cut of 3 % or 8% (of domestic companies paying tax at 30%) has brought some breathing space for many companies resulting in lower cash outflow concerning corporate tax.



### Who can opt for sec 115BAA?

Unlike sec 115BAB which is restricted only to companies that are engaged only in manufacturing activity, this sec will be applicable to all types of domestic companies.

### What does the section really say?

As per sec 115BAA, domestic companies have an option to pay tax at the rate of 22% on their total income provided conditions specified under the above section are satisfied. Below are the conditions to meet for availing the option u/s 115BAA:

A) Such domestic companies should not claim following deductions and exemptions,

- 1) Exemption in relation to units in Special Economic Zone u/s 10AA.
- 2) Addition Depreciation u/s 32(1)(iia) and investment allowance u/s 32AD under new plant and machinery in certain backward areas in the state of Andhra Pradesh, Bihar, Telangana, and West Bengal.
- 3) Deductions u/s 33ABA by making deposits towards site restoration by companies engaged in petroleum or natural gas or both in India.
- 4) Deductions towards expenditure incurred on scientific research u/s 35.

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5) Deductions on capital expenditure on specified business u/s 35AD.

6) Deductions for expenditure incurred on agriculture extension project u/s 35CCC or skill development project u/s 35CCD.

7) Chapter VI-A deductions including deductions on income specified u/s 80IA, 80IAB, 80IB, etc. Except for deductions u/s 80JJAA relating to the recruitment of new employees.

### Other conditions:

B) Such Domestic Company should exercise this option to pay tax at a lower rate of 22 % before the due date for filing the Return of Income. Even if the company has defaulted in filing the ROI or filed the return after the due date specified u/s 139(1) but option to exercise should be given before due date specified u/s 139. (as per sec 115BAA[4])

C) Once the option is exercised, then subsequent revocation of sec 115BAA is not possible.

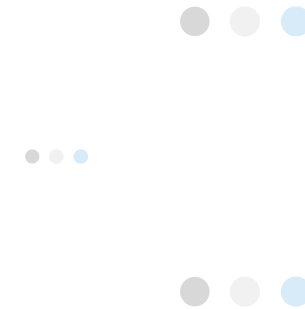
Clarification regarding,

1. Loss on account of additional depreciation u/s 32(1) (ia) of the act and
2. MAT credit as per sec 115JAA of the act.

### 1) Loss on account of addition depreciation u/s 32(1) (ia):

Income Tax department vide circular no. 29/2019 released on 02.10.2019 has made it clear that loss arising on account of additional depreciation will not be allowed to be carry forwarded or set off against profit of domestic companies who opted to pay tax under sec 115BAA.

Losses can be of two types, loss arising due to excess of expenditure over income and within this loss, loss which has arisen out of depreciation on fixed assets. There is a possibility that a company may be in profit if depreciation is not charged to the income statement. In that case, there will only be a loss on account of depreciation alone. This loss is referred to as accumulated depreciation under the Income Tax Act and it has no time limit to carry forward and set off in future years. Now, if such loss has arisen out of additional depreciation as referred to in sec 32(1)(ia), then this loss



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cannot be carried forward or set it off against income of the company who opted for sec 115BAA. The above explanation can be illustrated with a simple example.

**Example:**

Company ABC Ltd is having a loss on account of additional depreciation u/s 32(1)(ia) of Rs. 10,00,000. For the Financial Year ending 2019-20, the company has decided to opt for sec 115BAA for payment of tax at a lower rate of 22% on its total income. Now, if the company's gross total income is Rs. 5,00,000, the above loss of Rs. 10,00,000 will become ineligible for set it off against the income of Rs. 5,00,000.

The above ordinance further suggested,

" Since the domestic company has no timeline for opting sec 115BAA, the right course of action would be to exhaust the loss of Rs. 10,00,000 this year and pay tax under the normal rate and then from next year onwards, sec 115BAA can be resorted for paying tax at a lower rate"

**2) MAT credit u/s 115JAA:**

Domestic companies who are opting for sec 115BAA, have been exempted from computing profit u/s 115JB. Since MAT provision in itself will not be applicable for company opting to sec 115BAA, its credit will not be allowed to be set off against its profit computed under the regular provision.

The above ordinance gave the same suggestion of setting off MAT credit this year and exhaust the credit fully, then opt sec 115BAA from the subsequent year onwards.

**Additional points:**

- 1) There will be a surcharge @10% irrespective of the income, for domestic companies opting to sec 115BAA.
- 2) The effective rate of tax comes to 25.168% on the total income of the assessee.  $(22\% * 1.1 * 1.04)$
- 3) Once the option for paying tax under sec 115BAA has been exercised, then it should be followed subsequently for all the AY.
- 4) Marginal Relief will be applicable for domestic companies opting to pay tax under sec 115BAA.
- 5) Since it is only an option, proper planning based on the strategy of the company should be given due consideration before deciding to opt for sec 115BAA.

**Conclusion:**

Domestic Companies opting to pay tax under sec 115BAA cannot set off their loss incurred on account of sec 32(1)(ia) and MAT credit specified u/s 115JAA. However, it would be wise for such companies to first exhaust the loss and credit

u/s 115JAA, then from next year onwards, option u/s 115BAA can be exercised since sec 115BAA has not specified any timeline for opting for this section.

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