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# Key Changes in The Taxation Laws (Amendment) Bill, 2019



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## Introduction

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This article discusses the key changes or differences in the provisions in the Taxation Laws (Amendment) Bill, 2019. Some changes are minor in nature whereas some changes are major in nature.

The synopsis of the key changes or differences will ensure realignment of the study of the readers who once read the Ordinance in depth. Some changes in the Bill are so grave that they may affect the decision making of the taxpayers.

Readers are aware that on 20th September 2019, the President of India promulgated Taxation Laws (Amendment) Ordinance, 2019. The ordinance introduced various tax relief measures to boost the investment and growth in the economy by reducing corporate tax rates and surcharge on capital gains arising from the transfer of shares and other units.

In this article, an effort is made to bring the key changes or differences in the provisions introduced by the Taxation Laws (Amendment) Ordinance, 2019

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(herein referred as Ordinance) and by the Taxation Laws (Amendment) Bill, 2019 (herein referred as Bill).

### Amendment of Section 92BA

Section 92BA was amended by the Ordinance to include any business transaction between the persons referred to in section 115BAB(4). Due to insertion of certain other provisions in section 115BAB, the sub-section is moved higher from sub-section (4) to sub-section (6) in the Bill.

The change in the Bill is only the sub-section number.

### Amendment of section 115BA

(1) The Ordinance has substituted the marginal heading of section 115BA as 'Tax on income of certain domestic manufacturing companies'. The Bill has rephrased the marginal heading as 'Tax on income of certain manufacturing domestic companies'.

(2) The Ordinance had inserted a proviso in section 115BA and allowed a domestic company to exit from section 115BA if it opts for section 115BAB.

It appears it was a typographical error in the Ordinance. In the Bill, the same is rectified and the exit option from section 115BA is given to a domestic company if the option is exercised under section 115BAA.

### Amendment of Section 115BAA



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(1) A new proviso is added to provide that if in any assessment year if a person fails to satisfy the conditions for availing the benefit of reduced rate of income-tax under section 115BAA then the option so exercised shall become invalid for that as well as for subsequent assessment years and other provisions of the Income Tax Act, 1961 shall apply to that person as if no option is exercised under section 115BAA for that assessment year and subsequent assessment years.

(2) In sub-section (2) of section 115BAA, the Ordinance states that for exercising the option under this section, 'the following conditions shall apply subject to the condition that the total income of the company has been computed----' and then lists the conditions.

The Bill has substituted the words 'subject to the condition that' with the word 'if'.

(3) In the Ordinance, section 115BAA(2)(ii) only covers 'without set-off of any loss', as a condition to compute Total Income under section 115BAA.

The Bill has added the words 'or depreciation' in the said clause after the word 'loss' wherever they occurred.

(4) The Bill has added a new clause in sub-section (2) of section 115BAA. This clause has extended the restriction of set-off of brought forward business loss or unabsorbed depreciation if such loss or depreciation is attributable to

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restricted deduction as specified in section 115BAA(2)(i) in case of amalgamation of companies.

(5) In clause (iii) of sub-section (2) of section 115BAA of the Ordinance, for the words 'Other than clause (iia) ....', the words 'except clause (iia)....' is substituted in clause (iv) of the said sub-section/section.

In the Bill, the corresponding clause (iii) is renumbered as clause(iv) for section 115BAA(2).

(6) Sub-section (3) of section 115BAA states that the loss referred to in sub-clause (ii) of sub-section (2) shall be deemed to have been already given full effect and no further deduction for such loss shall be allowed for any subsequent year.

The sub-section (3) of the Bill covers the depreciation u/s 32(1)(iia) in addition to loss as stipulated in the Ordinance.

(7) A new proviso to sub-section (3) is added to provide for adjustment of unadjusted additional depreciation with the Written Down Value of the block of assets as on the 1st day of April 2019.

(8) The Bill has substituted the sub-section (4) of section 115BAA to provide for claiming of deduction u/s 80LA by a unit in the International Financial Services Centre subject to fulfilment of conditions contained in section 80LA if it has exercised the option under section 115BAA.

(9) Sub-section (4) of the Ordinance is replaced by sub-section (5) of the Bill.

(10) Sub-section (5) of Section 115BAA in the Bill has added a new proviso and provided that if the exercise of the option under section 115BAB becomes invalid due to violation of any condition mentioned in that section then such a person can exercise the option under section 115BAA.

### **Amendment of Section 115BAB**

(1) A new proviso is added in the Bill to section 115BAB(1) to provide that any other income which is not derived from the manufacturing activity shall be taxed at 22 percent instead of concessional 15 percent.

(2) A new proviso is added in the Bill to section 115BAB(1) to provide that where the AO has determined the normal profit for transactions with closely connected companies then the normal profit shall be taxed at 15 percent and the excess profit over the normal profit shall be taxed at 30 percent.

(3) A new proviso is added in the Bill to section 115BAB(1) to provide that short term capital gain on transfer of non-depreciable capital assets shall be taxed at 22 per cent.

(4) A new proviso is added in the Bill to section 115BAB(1) to provide that if in any assessment year if a person fails to satisfy the conditions for availing the benefit of reduced rate of income-tax under section 115BAB then the option so exercised shall become invalid for that as well as for subsequent assessment years and other provisions of the Income Tax Act, 1961 shall apply to that person as if no option is exercised under section 115BAB for that assessment year and subsequent assessment years.

(5) In section 115BAB(2)(a), after the words 'commenced manufacturing' in the Ordinance, the words 'commenced manufacturing or production of an article

or thing' is added in the Bill.

(6) In the Bill, in section 115BAB(2)(a)(i), the words 'the business' is added in the opening sentence of the clause.

(7) In the Ordinance, in the proviso to section 115BAB(2)(a)(i), the word 'undertaking' is replaced by the words 'company, business of' in the Bill.

However, in the second instance, there seems to be a typographical error as the proviso in the Bill used the word 'undertaking' in place of 'company'.

(8) In the Ordinance, in section 115BAB(2)(a)(iii), the building refers to any building previously used as a hotel or a convention centre. The Bill has restricted its wide applicability and provided only the building previously used as a hotel or a convention centre in respect of which deduction under section 80-ID is claimed and allowed.

(9) For the words appearing in the Explanation to section 115BAB(2)(a)(iii) in the Ordinance as "convention centre" and "hotel" have been rearranged as "hotel" and "convention centre" in the Bill.

(10) A new explanation is added to section 115BAB(2)(b) and clarified that certain activities shall not be considered as manufacturing or production activities. These activities are- development of computer software, mining, conversion of marble blocks into slabs, bottling gas into cylinder, printing of books, production of cinematograph films.

(11) In the Bill, a new condition for computation of income is added in case of amalgamation of companies in section 115BAB(2)(c)(ii). It is provided that in case of amalgamation of companies, total income shall be computed without

set-off of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the restricted deductions.

An explanation is added to sub-clause (ii) to clarify that in case of an amalgamation, the option exercised under this section shall remain valid in case of the amalgamated company only and if the conditions contained in sub-section (2) of section 115BAB are continued to be satisfied by such company.

(12) In the Bill, in section 115BAB(2)(c)(iii), the words 'the provision of' is added after the word 'under' in the Ordinance and the word 'except' is substituted for the words 'other than' in the Bill compared to Ordinance.

(13) In the Bill, the word 'already' is omitted from section 115BAB(3).

(14) The Bill has substituted the sub-section (4) of section 115BAB to provide for the issue of guidelines by the CBDT for removing difficulty if any arises in fulfilling the conditions specified in section 115BAB(2)(a)(ii)/(iii) or section 115BAB(2)(b).

(15) The Bill has added a new sub-section (5) to the section 115BAB to place the guidelines so issued by the CBDT before the Parliament.

(16) Sub-section (4) of the Ordinance is replaced by sub-section (6) of the Bill.

(17) The Bill has replaced the word 'company' appearing in the Ordinance after 'between the' with 'person to which this section applies' and appearing in the Ordinance after 'produces to the' with 'person'.



After the word 'arise' in the Ordinance, the Bill has added the words 'in such business'.

After the words 'in computing the profit and gains of such company' in the Ordinance, the Bill has substituted the word 'company' with the word 'business'.

(18) A new proviso is added to sub-section (6) of the Bill to provide that the excess profit shall be deemed to be the income of the person.

(19) Sub-section (5) of the Ordinance is replaced by sub-section (7) of the Bill.

(20) The Bill has added an explanation after sub-section (7) [which corresponds to sub-section (5) of the Ordinance] to define the meaning of the expression 'unabsorbed depreciation' for the purpose of section 115BAA and section 115BAB. The expression 'unabsorbed depreciation' shall have the same meaning as assigned to it in section 72A(7)(b).

### **Amendment of section 115JAA**

The Bill has amended the provisions of section 115JAA related to availing the MAT credit for MAT paid under section 115JA.

As per the amendment, MAT credit under section 115JAA shall not be available to a person who has exercised the option under section 115BAA.

When the Ordinance was promulgated, there was no such provision to restrict the availment of MAT credit by a person exercising option under section 115BAA. Thereafter, CBDT issued a [Circular No. 29/2019 dated 02.10.2019](#) and clarified that since a person exercising the option under section 115BAA is not

liable to pay MAT under section 115JB, hence the provisions of MAT credit under section 115JAA is not available to them.

This has created a controversy and confusion among the taxpayers that how a circular can override the provisions of the law.

With this amendment, the government tried to settle the controversy and clear the doubts of the taxpayers.

### **Amendment in Section 115JB**

There is a big amendment in section 115JB. In the Ordinance, the rate of tax payable on Book Profit or MAT u/s 115JB is reduced to 15 per cent from the existing 18.50 per cent. The Ordinance made the new reduced rate of tax on Book Profit or MAT from Assessment Year 2020-21 (or Previous Year 2019-20).

The Bill has amended the date of applicability of reduced rate of tax of 15 per cent on Book Profit or MAT from Assessment Year 2021-22 (or Previous Year 2020-21).

### **Amendment of Section 115QA**

The ending words in the Ordinance 'as amended from time to time' is omitted in the Bill.

### **Amendment in Finance (No. 2) Act, 2019**

The Bill has extended the benefit of reduced surcharge on income chargeable to tax under section 115AD(1)(b) to Individuals also.

### **Comments**

The key changes to the Bill are listed in this article which includes all the major and minor changes.

In case readers find that certain changes are missed out they may post a comment in the comment section below and the same will be suitably incorporated in the article if required.

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Update: The Taxation Laws (Amendment) Bill, 2019 as passed by Lok Sabha on 02.12.2019 has restored the provision of Ordinance of 2019 and reduced the rate of MAT of 15 percent on companies effective from AY 2020-21 relevant to Precious Year 2019-20. The same bill is passed by the Rajya Sabha on 05.12.2019. Hence, the reduced rate of MAT of 15 percent is applicable from Financial Year 2019-20 (AY 2020-21). Sujit Talukder <a href="https://taxcorner.co.in/">Income Tax Diary</a>

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Dear Kishor Neither the term splitting up nor reconstruction is defined in the Income Tax Act or in section 115BAB. However in general amalgamation, demerger, extension etc are considered as such. The answer to the question is very vast and needs to be understood on the basis of decided cases. I am thinking of writing an article on the topic, so stay tuned. <a href="https://alltaxdigest.blogspot.com/">Sujit Talukder</a>

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KISHOR

[3 months ago](#)

Sir, My query is that under section 115 BAB (Option of paying income tax at a further reduced base rate of fifteen percent (15%) , One of the condition be eligible is that it is not formed by splitting up or reconstruction of business already in existence . What is hereby mean split up or reconstruction of business ? Please describe

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