



Contents

PAGE

1

TAXATION LAWS (AMENDMENT) ACT, 2019

1.1	Backdrop	1
1.2	Taxation Laws (Amendment) Act, 2019 (TLA, 2019)	2
1.3	Corporate Tax Rate Reforms	3
1.3-1	Comparison of sections 115BA, 115BAA and 115BAB	6
1.3-2	Impact of new section 115BAA on existing domestic manufacturing companies who are presently availing section 115BA	12
1.3-3	Impact of new sections on existing domestic companies engaged in sector other than manufacturing and on domestic companies who had not opted for section 115BA and opted to avail exemptions instead	14
1.4	What options are available to an existing domestic company incorporated prior to 01.03.2016?	16
1.5	What are the options open to an existing domestic manufacturing company which is availing section 115BA?	16

2

TAX ON INCOME OF CERTAIN NEW DOMESTIC MANUFACTURING COMPANIES - NEW SECTION 115BAB

2.1	What are salient features of new section 115BAB	17
2.1-1	Opting for section 115BAB regime	18

CONTENTS

I-8

		PAGE
	2.1-2 Opting out of section 115BAB regime	19
	2.1-3 Option exercised for section 115BAB regime being invalid due to non-compliance with conditions in sub-section (2)	19
2.2	What are the conditions to be satisfied by a domestic co. to claim concessional tax rate of 15% u/s 115BAB	20
2.3	Domestic company	22
	2.3-1 Benefit of section 115BAB is not available to a foreign company	22
	2.3-2 Indian Company	23
	2.3-3 Whether section 115BAB shall apply to LLPs/ partnership firms	23
	2.3-4 Is section 115BAB applicable to listed companies	23
2.4	Date of registration of company should be on or after 01-10-2019	23
	2.4-1 Ours is an existing domestic manufacturing company availing 25% tax under section 115BA. Can we claim benefit under section 115BAB?	24
	2.4-2 Ours is an existing domestic company engaged in construction business. Can we claim benefit u/s 115BAB?	24
	2.4-3 Ours is an existing domestic manufacturing co. availing section 115BA. If we register a new subsidiary manufacturing co. on or after 01-10-2019, can the new subsidiary claim benefit u/s 115BAB?	24
2.5	The company has commenced manufacturing or production of an article or thing on or before 31-3-2023	24
	2.5-1 Ours is a partnership firm formed on 01-04-2019 engaged in manufacturing. We plan to convert into a company on or after 01-10-2019. We began manufacturing on 01-07-2019. Can the company claim benefit of 15% tax rate u/s 115BAB?	25
	2.5-2 Whether benefits under section 115BAB will continue to be available in case of amalgamation of companies?	26
2.6	Is it necessary that business of domestic co. Should be 'new business' in order to claim benefit u/s 115BAB?	26

	PAGE
2.7 What is meant by the condition “company is not formed by splitting up or reconstruction of a business already in existence”	26
2.7-1 What if any difficulty arises regarding fulfilment of this condition regarding business not being formed out of existing business	27
2.7-2 What are the consequences if it is found that business of the company is formed by splitting up or reconstruction of existing business	27
2.7-3 When it can be said that business of the company is formed by splitting up, or the reconstruction, of a company in existence?	28
2.7-4 What is meant by “Reconstruction of a business”	29
2.7-5 Whether takeover of a firm by allotting shares to partners is ‘reconstruction’ ?	33
2.7-6 What if an existing manufacturing partnership firm is taken over by a company by allotting shares to partners of the firm or is converted into company under Chapter XXI of the Companies Act, 2013 and new company incorporated on or after 01-10-2019? Can it avail section 115BAB?	34
2.7-7 Whether conversion of a firm or LLP into a company under Chapter XXI of the Companies Act, 2013 (the 2013 Act) amounts to splitting up or reconstruction of a business? Is the new converted entity eligible for benefits u/s 115BAB?	34
2.8 What is meant by the condition “does not use machinery or plant previously used for any purpose”	35
2.8-1 What is meant by “total value” for the purpose of determining whether total value of second hand plant and machinery used does not exceed 20% of total value of plant and machinery used by the company?	36
2.8-2 Whether the condition, as regards non-user of second-hand plant and machinery exceeding 20% of the total value of plant and machinery, is a one-time condition to be followed only in company’s first year or is required to be complied with every year?	36

CONTENTS

I-10

PAGE

2.8-3	What if any difficulty arises regarding fulfilment of this condition regarding business not being formed out of existing business	36
2.8-4	What are the consequences if it is found that more than 20% of the plant and machinery used by the company is second-hand plant and machinery	37
2.9	The company does not use any building previously used as a hotel or convention centre	37
2.9-1	Whether the condition, as regards non-user of any building previously used as a hotel or convention centre, is a one-time condition to be followed only in company's first year or is required to be complied with every year?	38
2.9-2	What if any difficulty arises regarding fulfilment of this condition non-user of any building previously used as a hotel or convention centre	38
2.9-3	What are the consequences if it is found that building used by the company was previously used as hotel or conventions centre and deduction u/s 80-ID was claimed and allowed in respect thereof?	38
2.10	What is "manufacture or production of any article or thing"?	39
2.10-1	Businesses which shall not be regarded as 'business of manufacture or production of an article or thing'	39
2.10-2	What about companies incorporated on or after 01-10-2019 but before 21-11-2019 which have invested in new plant and machineries to carry on activities specified in the New Explanation retrospectively inserted in section 115BAB? What reliefs and remedies are available to them?	40
2.10-3	Definition of 'Manufacture'	41
2.10-4	What is the meaning of the words 'Production'	42
2.10-5	Illustrative list of businesses/activities/processes which amount/do not amount to manufacture/production	44
2.10-6	Article or thing	56
2.10-7	What is meant by 'Research' ?	57

	PAGE
2.11 What is the difference in computation of total income under normal provisions and under the provisions of section 115BAB?	57
2.11-1 What exemptions or deductions are not available to companies opting for section 115BAB?	58
2.11-2 Unabsorbed depreciation	59
2.11-3 If a company opts for section 115BAB, whether current year's losses can be set off?	59
2.11-4 Whether there is any bar on set-off of carried forward loss from any earlier assessment year?	59
2.12 How to opt for section 115BAB scheme?	60
2.12-1 Can company keep opting in and opting out of section 115BAB at its own sweet will?	61
2.13 Can a company exit the section 115BAB scheme and migrate to normal computation provisions or to section 115BAA?	61
2.14 When will provisions of arms length pricing (transfer pricing provisions) be invoked against a company which opts for section 115BAB regime?	63
2.15 What benefits will a domestic co. get upon fulfilment of conditions in para 2.2 above	64
2.15-1 Special rate of 17.16% on income derived from or incidental to manufacture or production in related party transactions is subject to compliance with sub-section (6)	65
2.15-2 Where the total income of a domestic company, includes any income, which has neither been derived from nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided separately under Chapter XII	65
2.15-3 Income derived from or incidental to manufacturing or production of an article or thing	66
2.15-4 Subject to other provisions of this Chapter	67
2.15-5 What is the rate of surcharge applicable to income taxable @ 15% under section 115BAB and to other incomes taxable under various other provisions of Chapter XII <i>i.e.</i> sections 110 to 115BBG except sections 115BA and 115BAA	68

CONTENTS

I-12

	PAGE
2.15-6 What are the incomes to which the tax rate of 15% (effective tax rate 17.16%) under section 115BAB does not apply?	68
2.15-7 What is the surcharge applicable to the incomes in the table as above?	69
2.15-8 What is the surcharge applicable to the tax rate of 15% u/s 115BAB?	69
2.16 Whether company covered under section 115BAB is exempt from MAT?	69
2.17 If a domestic company which has opted for section 115BAB fails to comply with conditions in section 115BAB(2), what are the consequences? Are any safety valves available against such consequences?	69
2.18 What if company finds difficulties in complying with the provisions of section 115BAB(2)(a)(ii)/(iii)/section 115BAB(2)(b)?	71
2.19 If assessee-company is found during assessment to be not compliant section 115BAB, then how will income of company be computed?	71
2.20 Whether company can carry on business other than specified business?	72
2.21 What if company wants be a diversified company not limited to manufacturing?	72
2.22 Is there any maximum turnover limit criteria a domestic co. must satisfy to claim benefit u/s 115BAB?	72
2.23 Is there any sunset clause in section 115BAB after which special low rate of 17.16% will not apply?	72
2.24 When is it better to opt for section 115BAB rate of 17.16% without claiming specified deductions? When is it better to claim deductions and pay tax at pre-amended rates?	73
2.24.1 When is it better for a new domestic manufacturing company with turnover less than Rs. 400 crores (small and medium sized company) to opt for section 115BAB without exemptions/reliefs in para 2.2(j) instead of regular concessional tax rates applicable to such companies with such exemptions/reliefs?	74
2.24-2 When is it better for a new domestic manufacturing company which is a DPIIT-registered startup to opt for section 115BAB without exemptions/reliefs	

	PAGE
in para 2.2(j) instead of regular concessional tax rates applicable to such companies with such exemptions/reliefs?	75
2.24-3 We will be floating a DPIIT-registered startup private limited company in November 2019. Will we be eligible for tax holiday under section 80-IAC if we opt for section 115BAB?	75
2.24-4 We will be floating a DPIIT-registered startup private limited company in November 2019. Will we be ineligible for section 115BAB if we get certification of Inter Ministerial Board (IMB) as eligible to claim deduction under section 80-IAC ?	75
2.24-5 What happens to claim for carry forward and set off of losses in terms of section 79 if a new startup company opts for section 115BAB?	75
2.25 If manufacturing LLP or firm converts itself to a company on or after 1-10-2019 and satisfies all conditions of section 115BAB, will the company be eligible to avail set-off of unutilised Alternate Minimum Tax (AMT) credit of erstwhile LLP/firm?	76

3

TAX ON INCOME OF CERTAIN NEW DOMESTIC COMPANIES - NEW SECTION 115BAA

3.1 What are salient features of new section 115BAA?	77
3.1-1 Opting in	78
3.1-2 Opting out of section 115BAA regime-permanent exit	79
3.2 What are the conditions to be satisfied by a Domestic Co. to claim concessional tax rate of 22% u/s 115BAA	79
3.2-1 Whether section 115BAA shall apply to LLPs?	82
3.2-2 Is section 115BAA applicable to listed companies?	82
3.2-3 Whether there is any kind of restriction as to the business that can be carried on by a co. opting for sec. 115BAA?	82
3.2-4 What if company wants be a diversified company not limited to manufacturing?	82

CONTENTS

I-14

		PAGE
	3.2-5 Is there any maximum turnover limit criteria a domestic co. must satisfy to claim benefit u/s 115BAA?	82
	3.2-6 Is there any sunset clause in section 115BAA after which special low rate of 25.17% will not apply?	82
	3.2-7 Is it necessary that business of domestic co. should be 'new business' in order to claim benefit u/s 115BAA?	82
3.3	What is the difference in computation of total income under normal provisions and under the provisions of section 115BAA?	83
	3.3-1 No bar in availing deduction under section 80LA in respect of company's unit in International Financial Services Centre	83
	3.3-2 Can a company opting for section 115BAA opt for set-off of brought forward loss?	84
	3.3-3 Can a company opting for section 115BAA avail set-off of brought forward loss on account of additional depreciation u/s 32(1)(<i>ia</i>)?	85
3.4	How to opt for section 115BAA	86
3.5	Once having entered section 115BAA regime, can company exit it?	87
3.6	What benefits will a domestic co. get upon fulfilment of conditions in 3.2 above	87
	3.6-1 "Subject to other provisions of this Chapter"	88
	3.6-2 What are the incomes to which the tax rate under section 115BAA does not apply?	88
	3.6-3 What is the rate of surcharge applicable to income taxable @ 22% under section 115BAA and to other incomes taxable under various other provisions of Chapter XII <i>i.e.</i> sections 110 to 115BBG except sections 115BA and 115BAB	89
3.7	Whether company opting for section 115BAA is exempt from MAT?	89
3.8	If an existing company opts for section 115BAA, what happens to its unutilised MAT credit?	89
3.9	Suppose an existing company, having unutilised MAT credit, opts for section 115BAA. Then company permanently exits section 115BAA in terms of para 3.5 in later year. What happens to unutilised MAT credit?	90

	PAGE
3.10 When is it better to opt for section 115BAA rate of 25.17% without claiming specified deductions? When is it better to claim deductions and pay tax at pre-amended rates?	91
3.10-1 When is it better for a domestic company with turnover less than Rs. 400 crores (small and medium sized company) to opt for section 115BAA without exemptions/reliefs in para 3.2(g) instead of regular concessional tax rates applicable to such companies with such exemptions/reliefs?	92
3.10-2 When is it better for a new domestic manufacturing company which is a DPIIT-registered start-up to opt for section 115BAA without exemptions/reliefs in para 2.2(j)(i)/(ii) instead of regular concessional tax rates applicable to such companies with such exemptions/reliefs?	93
3.10-3 We are an existing DPIIT-registered start-up private limited company. Will we be eligible for tax holiday under section 80-IAC if we opt for section 115BAA?	94
3.10-4 We are an existing DPIIT-registered start-up private limited company we are certified by Inter Ministerial Board (IMB) as eligible to claim deduction under section 80-IAC. Are we eligible to opt for section 115BAA?	94
3.10-5 What happens to claim for carry forward and set off of losses in terms of section 79 if a new start-up company opts for section 115BAA?	94

4

TAX ON INCOME OF CERTAIN DOMESTIC COMPANIES - SECTION 115BA

4.1 What amendments have been made by the TLA to section 115BA?	95
4.2 Please explain the new second proviso inserted in section 115BA(4)	96
4.3 Whether existing companies availing section 115BA can opt for section 115BAA with effect from AY 2020-21?	96
4.4 What happens when a domestic co. Claiming benefits under section 115BA opts for section 115BAA?	96

- 4.5 If an existing company opts for section 115BAA, what happens to its unutilised mat credit? Will unutilised MAT credit lapse?

97

5

MINIMUM ALTERNATE TAX EXEMPTIONS AND CONCESSIONS

- 5.1 Which companies have been exempted from MAT by TLA, 2019?
- 5.2 What is the effective date of above exemption from MAT to domestic companies which opt for section 115BAA or section 115BAB?
- 5.3 Have any concessions/relief in the matter of MAT been given to companies which don't opt for section 115BAA or 115BAB?
- 5.4 If an existing company opts for section 115JAA, what happens to its unutilised MAT credit? Will unutilised MAT credit lapse?

98

98

98

100

6

RELIEF TO LISTED COMPANIES FROM TAX ON BUY-BACK UNDER SECTION 115QA

- 6.1 Does the ordinance completely exempt buy-back of shares by listed companies from tax under section 115QA?
- 6.2 Whether buy-back of listed shares are exempt in shareholder's hands u/s 10(34A) if made on or after 05-07-2019 for which public announcement was made before 05-07-2019?

101

102

7

RELIEF TO INVESTORS IN CAPITAL MARKETS BY WITHDRAWAL OF ENHANCED SURCHARGE IN RESPECT OF TAX ON CAPITAL GAINS

- 7.1 What is the 'enhanced surcharge' introduced by the Finance (No. 2) Act, 2019 on the tax applicable to the incomes of individual, HUF, AOP, BOI and AJP

104

	PAGE	
7.2	What is the nature of relief given by the ordinance to individual, HUF, AOP, BOI and AJP investors in capital markets in respect of enhanced surcharge	105
7.3	What about payment of advance tax? Whether the above changes in enhanced surcharge are to be factored in for advance tax calculations and payment?	117

8

RELIEF TO FPIs BY WITHDRAWAL OF ENHANCED SURCHARGE IN RESPECT OF TAX ON CAPITAL GAINS

8.1	What is the nature of relief that ordinance gives to foreign portfolio investors <i>i.e.</i> FPIs?	118
-----	----------------------------------------------------------------------------------------------------	-----

9

WHAT IS IN IT FOR START-UPS

9.1	The Finance Minister announced complete exemption to start-ups from Angel Tax on 23-08-2019. What is the nature of that exemption?	120
9.2	Is the exemption announced by FM retrospective or is it applicable from 23-08-2019?	120
9.3	In view of the FM's announcement dated 23-08-2019, can I issue shares at premium to residents who are family members of promoters to increase the aggregate of paid-up capital and share premium of my start-up private limited company to more than Rs. 25 crores without fear of losing angel tax exemption?	121
9.4	In view of the FM's announcement dated 23-08-2019, can my start-up private limited company invest in immovable property, capital contributions in other entities, loans and advances, shares and securities, motor vehicle costing more than Rs.10 lakhs?	121
9.5	What about CBDT's Circular No. 22/2019 dated 30-08-2019? Does it give effect to full unconditional exemption from Angel Tax announced on 23-08-2019?	122
9.6	So is there nothing at all for start-ups in this ordinance?	122
9.7	What about pending assessments of DPIIT-recognised start-up companies based on notices issued prior to 19-02-2019? How should start-ups deal with these?	123

CONTENTS

I-18

PAGE

9.8	When to file declaration in form 2? Can it be filed after issue of notice under section 143(2)/147 when assessment proceeding is pending?	124
9.9	Whether DPIIT-recognition can be obtained after issue of notice under section 143(2)/147 when assessment proceeding is pending?	124
9.10	What if assessment was made before 19-02-2019 and demand raised in respect of angel tax <i>i.e.</i> Additions u/s 56(2)(viib)? Can exemption be obtained by filing Form No. 2 in such cases?	125
9.11	What happens if matter as in FAQ 9.10 above is pending in appeal?	125
9.12	What about demands raised on start-up company in orders passed before 19-02-2019?	126

10

**HIGHER DEPRECIATION ON MOTOR CARS
ACQUIRED ON OR AFTER 23-08-2019
BUT BEFORE 01-04-2020**

10.1	What are the higher rates of depreciation admissible on motor cars other than for running on hire acquired on or after 23-08-2019 but before 01-04-2020	127
10.2	What are the conditions to be satisfied to avail higher rate of depreciation of 30% as above	128
10.3	What if the motor car is acquired/put to use on or after 03.10.2019 but on or before 31-03-2020? Will full higher depreciation of 30% be available or put to use for less than 180 days rule will be invoked to limit depreciation to 50% of 30% <i>i.e.</i> 15%?	128
10.4	The notification was issued only on 20-09-2019. We get less than 13 days to buy a car and avail the full higher depreciation of 30%. Govt. took almost one month after announcement to issue notification. Surely, the time for buying car should be extended by a month to claim full depreciation of 30%	128
10.5	What higher rate of depreciation is admissible on motor buses, motor lorries and motor taxies used in a business of running them on hire if same acquired and put to use on or after 23-08-2019 but before 01-04-2020	129

	PAGE
10.6 What conditions must be satisfied to avail higher rate of depreciation of 45% as above on motor buses, motor lorries and motor taxies used in a business of running them on hire	129
10.7 Is there any restriction that the motor car or motor bus or lorry or taxi which is purchased must be a new one and not a second hand?	129

APPENDICES

◆ <i>Relevant provisions of Income-tax Act, 1961 as amended by the Taxation Laws (Amendment) Act, 2019</i>	133
◆ <i>Relevant provisions of Finance (No. 2) Act, 2019 as amended by the Taxation Laws (Amendment) Act, 2019</i>	143
◆ <i>Taxation Laws (Amendment) Act, 2019</i>	167
◆ <i>Depreciation Table</i>	179