

NOTE ON APPLICABILITY AND IMPLICATIONS OF SECTION 115BAA OF THE INCOME TAX ACT, 1961

Section 115BAA was introduced by the Government of India through the Taxation (Amendment) Ordinance 2019 on the 20th of September 2019 with the objective of proffering reduced rates of taxes to domestic companies. The provisions of Section 115BAA, its applicability and manner of applying, the prerequisites for availing the reduced rate of tax and its implications on facets such as Minimum Alternate Tax provisions, taxability of Capital Gains, set off of brought forward losses, depreciation, etcetera, have been discussed below.

1. What is the option provided under Section 115BAA?

Briefly put, Section 115BAA provides an option to all domestic companies to pay **tax at an effective rate of 25.17% (22% Basic Tax plus 10% Surcharge and 4% cess)** subject to satisfaction of certain conditions.

2. Who shall exercise the option?

The option of reduced rate of tax shall be exercised only by a Domestic Company that satisfies certain conditions (mentioned in Point 5 below). Hence, Individuals, LLPs, Partnership Firms, AOP, BOI, Foreign Companies and Societies are not eligible to avail this option.

3. When shall the option be exercised?

This option can be exercised **with effect from Assessment Year 2020-21** i.e., in Previous Year 2019-20 or in any subsequent assessment year thereafter. Being an optional scheme, the decision of exercising the option is the **prerogative of the assessee company**.

In the absence of a strict timeline to exercise the option, the company is at the liberty to determine the assessment year in which it wishes to opt for the reduced rate of tax. However, **upon exercising** the option in a particular assessment year, **it cannot be subsequently withdrawn and shall be continually applied in subsequent assessment years**.

Further, if in any previous year the assessee company **fails to satisfy any of the conditions** (mentioned in Point 5 below)- **the scheme under 115BAA would become invalid** for the assessment year pertaining to that financial year as well as subsequent assessment years i.e., **the assessee company will not be eligible to exercise this option in future**.

4. What is the process for exercising the option?

Eligible companies that wish to exercise the option shall do so in the manner prescribed in Rule 21AE of the Income Tax Rules, 1962. As per **Rule 21AE**, the option u/s. 115BAA shall be exercised by **electronically furnishing details in Form No. 10-IC** to the principal officer, either under digital signature or electronic verification code. The proforma of Form No. 10-IC has been attached as *Annexure 1* of this document for reference.

The above form shall be furnished **on or before the due date of furnishing return of income provided u/s. 139(1) of the Income Tax Act, 1962** (i.e., 30th November in case of domestic companies attracting Transfer Pricing provisions and 31st October in case of other domestic companies).

5. What are the conditions to be satisfied for exercising the option?

Section 115BAA provides that where a company wishes to avail the benefit of reduced rate of tax, the **following set of deductions shall not be allowed** to be reduced from its total income for the purposes of calculating tax at such reduced rates:

1	Section - 10AA	Special provisions in respect of newly established Units in Special Economic Zones
2	Section - 32(1)(iia)	Additional Depreciation (it is pertinent to note that this restriction is only on additional depreciation and <u>regular depreciation is permitted to be reduced from the total income of the assessee so long as it does not pertain to other deductions enumerated in this table</u>)
3	Section 32AD	Investment Linked Deduction
4	Section - 33AB	Tea development account, coffee development account and rubber development account
5	Section - 33ABA	Site Restoration Fund
6	Section 35	Expenditure on Scientific Research
7	Section 35 AD	Deduction in respect of expenditure on specified business
8	Section - 35CCC	Expenditure on agricultural extension project
9	Section - 35CCD	Expenditure on skill development project
10	Chapter VI A	No deductions under Chapter VI A can be made while computing the total income for the purpose of Section 115BAA, subject to the <u>following exceptions</u> : a. <u>Section - 80JJAA</u> : Deduction in respect of employment of new employees. While all other deductions like 80C, 80G, etc cannot be availed while computing total income for the purpose of section 115BAA, there is no such restriction on section 80JJAA deduction. b. <u>Section 80LA</u> : Persons having eligible unit in the

		<p>International Financial Services Centre referred to in section 80LA(1A) shall be allowed to claim deduction u/s. 80LA while computing total income for the purpose of section 115BAA.</p> <p>c. Section 80M: Deductions in respect of inter-corporate dividends. Inserted vide Finance Bill, 2020, this deduction can be availed w.e.f. AY 2021-2022 while computing total income for the purpose of section 115BAA.</p>
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6. Can the brought forward losses and unabsorbed depreciation from previous assessment years be adjusted while computing total income for the purpose of Section 115BAA?

Brought forward losses and depreciation from the previous years shall be set off against the income **on the condition that they must not be attributable to the deductions mentioned in point 5 above.** To sum up, brought forward losses, additional depreciation or unabsorbed depreciation pertaining to or attributable to any of the deductions mentioned in Point 5 above shall not be eligible to be set off against the total income for the purpose of Section 115BAA.

In such cases it is advisable that the companies should avail the benefit of section 115BAA only after utilising the brought forward loss on account of deductions and additional depreciation mentioned in Point 5 above.

Further, if a company has unabsorbed depreciation as on 31-3-2020 and if it opts into 115BAA, then the WDV of the block as on 1-4-19 can be adjusted to this extent in the manner as may be prescribed. However, no clarification has been issued by CBDT in this regard.

7. What is the applicability of MAT Provisions in cases where option u/s. 115BAA is exercised and the position of unutilised MAT Credit?

MAT provisions shall not be applicable and consequently no MAT Credit shall be utilised in case Section 115BAA is opted.

As per Section 115JB(5A)(ii), the MAT provisions under Section 115JB shall not be applicable to the company that has exercised the option referred to under section 115BAA or section 115BAB.

It has been further clarified in Circular No. 29/ 2019 dated 02nd October 2019 that since section 115JB relating to MAT are not applicable, MAT credit shall not be available to the assessee consequent to exercising this option.

In such cases it is advisable that the companies avail the benefit of section 115BAA only after utilising the MAT credit against the regular tax payable if any.

8. *Will Section 115BAA impact Capital Gain tax?*

Even if an assessee company opts to exercise the option u/s. 115BAA, **there will be no impact on the rates of tax of LTCG and STCG and the brought forward losses under the head capital gains.** Section 115BAA does not supersede the other specific sections of Chapter XII (exceptions being Section 115BA and Section 115BAB). Hence, the incomes of specific nature covered under Chapter XII would be subject to tax at rates mentioned in those sections, i.e., STCG (Section 111A) at 15 %, LTCG (Section 112) at 10 % or 20%, Section 112A at 10 %, dividend from foreign companies (Section 115BBDA) at 15 %, etcetera. Further, surcharge rates would also be levied accordingly and not at 10%.

DISCLAIMER

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ANNEXURE 1

PROFORMA

FORM No. 10-IC

[See sub-rule (1) of rule 21AE]

Application for exercise of option under sub-section (5) of section 115BAA of the Income - tax Act, 1961

To,
The Assessing Officer,
.....
.....
Sir/Madam,

I,....., on behalf of [name and registered address of the company exercising the option under sub-section (5) of section 115BAA]having Permanent Account Number (PAN)..... do hereby exercise the option referred to in sub-section (5) of section 115BAA of the Income-tax Act, 1961 (the Act) for previous year 20.....-..... and subsequent years.

2. The details of the company are given below:

- (i) Name of the Company :
- (ii) Whether a Domestic company : Yes/No
- (iii) PAN :
- (iv) Registered Address :
- (v) Date of Incorporation :
- (vi) Nature of business or activities :

3.

(i) Whether the company has any Unit in International Financial Services Centre (IFSC), as referred to in sub-section (1A) of section 80 LA : Yes/No

(ii) If answer to (i) is Yes, provide following details:

(Add number of columns depending on number of Units):

	Unit 1	Unit 2	Unit 3
Name			
Address of Unit			
Nature of Activities undertaken in Unit			

4. Whether option under sub-section (4) of section 115BA has been exercised in From 10-IB : Yes/No

5. I do hereby withdraw the option under sub-section (4) of section 115BA exercised on [date]..... in Form. No. 10IB, for previous year 20.....-.....and subsequent years. (to be activated in the utility if answer to point 4 is Yes)

6. I understand that the option under sub-section (5) of section 115BAA, once exercised for any previous year, cannot be subsequently withdrawn for the same or any other previous year.

7. I do hereby further affirm that the conditions stipulated in section 115BAA are and shall be satisfied by the aforesaid company.

Place:
Date:
Yours faithfully,
Signature of Principal Officer.....
Name.....
Designation.....
Address.....

Note: This option form should be signed by the principal officer.