

CHAPTER-2 : TAXATION OF VARIOUS PERSONS

TAXATION OF FIRM

Introduction

1. Under Income Tax Act, a partnership firm has a separate identity apart from its partner. It is taxed as a separate entity at a flat rate of 30% + applicable surcharge + Health & Education cess @ 4%.

Special point: Unless and until otherwise mentioned, a partnership firm shall include limited liability partnership. Further, the word 'Partner' includes partner of a limited liability partnership.

2. The share of partner (member) in the income of the firm is not taxable in the hands of partners [Sec. 10(2A)].
3. As in case of any other assessee, income of the firm (including LLP) is also assessed under heads of income i.e. 'Income from house property', 'Profits & gains of business or profession', 'Capital gains' and 'Income from other sources'.

Special point:

- A firm cannot have income under the head 'Salaries'
- Registration of firm is not compulsory to assess a firm as such for income tax purpose.

DEDUCTION u/s 40(b)

In case of computation of income under the head "Profits & gains of business or profession" a partnership firm shall, apart from all deductions discussed in the said chapter, be further allowed deduction u/s 40(b) in respect of -

- interest to partner; and
- remuneration to partner.

Conditions: As per sec. 185, to claim deduction u/s 40(b), the firm shall have to fulfil the following conditions as laid down u/s 184.

1. The partnership must be evidenced by an instrument [Sec. 184(1)(i)].
2. A certified copy of the instrument of partnership shall accompany the return of income of the year in which assessment as a firm is first sought [Sec. 184(2)].
3. The individual shares of the partners must be specified in the instrument. [Sec. 184(1)(ii)]
4. There is no failure as specified u/s 144 on part of the firm

Effect of non-fulfilment of above conditions: As per sec. 185, where a firm does not comply with the provisions of sec. 184 for any assessment year, then no deduction by way of interest to partner or remuneration to partner shall be allowed

Interest to partner

Interest to partners *whether on capital or on loan* is allowed as deduction.

Conditions

1. Interest must be authorised by the partnership deed.
2. Payment must pertain to a period after the partnership deed.

Deduction: Minimum of the following is allowed as deduction -

- (a) Actual interest given to partner as per deed.
- (b) 12% p.a. simple interest.

Applicability of sec. 40(A)(2): Interest to partner paid at a rate higher than the normal market rate of interest shall be governed by sec. 40(A)(2) and excess interest shall be disallowed.

Interest to representative partner

Meaning: Where an individual is a partner in a firm on behalf of or for the benefit of any other person, he is termed as a representative partner.

Treatment: Interest to representative partner –

1. **Governed by sec. 40(b):** Interest paid by the firm -
 - to such individual as partner in a representative capacity; and
 - to the person so represented.
 - shall be governed by sec. 40(b).
2. **Not governed by sec. 40(b):** Interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be governed by sec. 40(b) but by sec. 36(1)(iii).

Interest on drawings: Interest on drawings, charged by the firm from its partner(s), shall be treated as taxable income.

Remuneration to partner

Remuneration to a partner includes salary, fees, commission, bonus, etc.

Conditions: Remuneration is allowed subject to fulfilment of the following conditions:

1. Partner must be a working partner.
2. Remuneration must be authorised by the partnership deed.
3. Payment must pertain to a period after the partnership deed.

Working partner means *an individual* who is actively engaged in conducting the affairs of the business or profession of the firm. ‘Time devotion’ is not the key factor for deciding the status of partner as a working partner.

Deduction: Remuneration (in total) is allowed to the minimum of the following:

- (a) Actual remuneration allowed to all partners.
- (b) Maximum permissible limit u/s 40(b)(v) as discussed under:

Maximum permissible limit

Amount of book-profit	Maximum remuneration allowed
In case of loss	₹ 1,50,000
In case of profit	
First ₹ 3,00,000	90% of book profit or ₹ 1,50,000, whichever is higher
On balance book-profit	60% of next book profit

1. *Computation of Book Profit*

Step 1: Find out the net profit of the firm as per Profit & Loss A/c

Step 2: Make adjustment as per sec. 28 to 44DB (including adjustment for interest on partner's capital)

Step 3: Add remuneration to partner, if debited to the Profit & Loss A/c

Step 4: Subtract unabsorbed depreciation but do not subtract brought forward business losses. The resultant figure is book profit.

Note: Due to subtraction of unabsorbed depreciation the residual profit should not be less than the brought forward losses, which are to be set-off in the current year.

Notes:

- Income from house property, Income from other sources and Capital gains do not form part of book profit.
- Deduction under chapter VIA (i.e. 80C to 80U) shall be ignored for this purpose. Remuneration to a representative partner

Remuneration to a representative partner shall be taxable in the hands of such partner and not in hands of organization so represented. However, provision of sec. 40(b) will be applicable.

Treatment in the hands of partner

Share of profit: Partners' share in the total income of the firm is exempt in the hands of partner [Sec. 10(2A)]. Income of a firm shall be taxed in hands of firm only and the same can under no circumstances be taxed in hands of its partners. The entire profit credited to the partner's account in the firm would be exempt from tax in hands of such partners, even if the income chargeable to tax becomes Nil in the hands of the firm on account of any exemption of deduction as per provisions of the Income-tax Act.

Interest and remuneration to partner: Interest and remuneration to partner shall be taxable in the hands of partner, to the extent it is exempted in the hands of firm.

General note related to firm Assessment

Effect of registration of firm: Registration of firm is not compulsory to assess a firm as such for income tax purpose.

Change in constitution or profit share ratio: As per sec.184(3), a firm shall be assessed as firm for the purposes of this Act, if there is no change in -

- the constitution of the firm
- profit sharing ratio.

Where any such change had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership (partnership deed) along with the return of income of the relevant assessment year [Sec. 184(4)].

Note: In case of mere change in remuneration to partner or interest to partner, the revised instrument should be submitted to claim benefit u/s 40(b). However, if the revised instrument has not been filed then the interest and remuneration shall be allowed as per the old instrument.

1. *Change in the constitution of the firm* means —

- one or more of the partners cease to be partner(s); or
- one or more new partners are admitted

<i>Carry forward & Set-off of loss of Firm on change in constitution of firm [Sec.78]:</i> Where a change occurs in the constitution of firm, on account of retirement or death of a partner, the proportionate loss of the retired or deceased partner shall not be carried forward. However, this section shall not apply in case of unabsorbed depreciation. Benefit of indexation	Available up to the year when succession took place.
Cost of acquisition of transferred asset in hands of the LLP	If conditions u/s 47(xiii b) are satisfied: Cost of asset in hands of the company If conditions u/s 47(xiii b) are not satisfied: Value at which such asset was transferred to the LLP at the time of conversion
Period of holding in hands of the LLP	In any circumstances, period of holding starts afresh. In other words, holding period of the previous owner cannot be considered.

ALTERNATIVE TAX REGIME FOR INDIVIDUAL / HUF [Sec 115BAC]***Applicable to***

Individual / HUF

Conditions

a. Total income of the assessee shall be computed:

(i) Without any exemption or deduction under following provisions

Deduction not available under following section	Details
10(5)	Leave Travel Concession
10(13A)	House Rent Allowance
10(14)	Special Allowances <i>Exception:</i> Few prescribed allowances
10(17)	Allowance to MPs/MLAs
10(32)	Exemption in respect of clubbing of minor child
10AA	Special Economic Zone
16	Deduction under the head Salaries - Standard Deduction, Deduction for Entertainment allowance and Deduction for professional tax
24(b) in respect of self occupied property	Interest on borrowed capital <i>Taxpoint: Deduction is available in respect of other properties like letout, deemed to be let out</i>
32(1)(iia)	Additional Depreciation
32AD	Investment Allowance
33AB	Tea / Coffee / Rubber Development Allowance
33ABA	Site Restoration Fund
35(2AA) or 35(1)(ii) / (iia) / (iii)	Scientific Research through outside institution
35AD	Capital Expenditure in respect of specified business
35CCC	Agriculture Extension Project
57(iia)	Standard deduction in respect of family pension
Deduction under chapter VIA	<i>Exception:</i> Deduction in respect of contribution to NPS u/s 80CCD(2); deduction u/s 80JJAA and deduction u/s 80LA is available

(ii) without set off of any loss:

- a. carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred above;
- b. under the head “Income from house property” with any other head of income;

- ii. by claiming the depreciation, if any, u/s 32 [except additional depreciation], determined in prescribed manner; and
 - iii. without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.
- b. The assessee is required to exercise the option (in prescribed manner) to avail the benefit of this section.

Rate of Tax

Under this tax regime, income tax shall be computed at the option of the assessee considering the following rate:

Total income	Rate of tax
Upto ₹ 2,50,000	Nil
From ₹ 2,50,001 to ₹ 5,00,000	5%
From ₹ 5,00,001 to ₹ 7,50,000	10%
From ₹ 7,50,001 to ₹ 10,00,000	15%
From ₹ 10,00,001 to ₹ 12,50,000	20%
From ₹ 12,50,001 to ₹ 15,00,000	25%
Above ₹ 15,00,000	30%

Special point:

- If a person opts for this regime, ₹ 2,50,000 shall be considered as basic exemption limit irrespective of his age. In other words, for all category of individual i.e, senior citizen, super senior citizen and others, basic exemption limit is ₹ 2,50,000
- Rebate u/s 87A is available
- Computed tax is further increased by applicable surcharge, if any, and health and education cess
- If any income is taxable at special rate u/s 110 to sec. 115BBG (except sec. 115BAC), such income shall be taxable at that special rate of tax.

Other Points

- ❑ **Full effect of loss and depreciation:** The loss and depreciation referred above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year. Where there is a depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year 2021-22, corresponding adjustment shall be made to the written down value of such block of assets as on 01-04-2020 in the prescribed manner (if the option is exercised for a previous year relevant to the assessment year 2021-22).
- ❑ **Exercise of option:** The provision of this section shall not apply unless option is exercised in the prescribed manner by the person:

Where the person has income from business or profession	Within the due date specified u/s 139(1) for furnishing the returns of income for any previous year relevant to the assessment year and such option once exercised shall apply to subsequent assessment years
Where the person not having aforesaid income	Along with the return of income to be furnished u/s 139(1) for a previous year relevant to the assessment year

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- **Withdrawal of option:** In case person having income from business or profession, option once exercised for any previous year can be withdrawn only once for a previous year other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise option. However, if such person ceases to have any income from business or profession in which case, he may exercise the option for that assessment year.

Where the person fails to satisfy the conditions in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and other provisions of this Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year.

Further where the option was exercised by a person having income from business or profession, in the event of failure to satisfy the conditions, it shall become invalid for subsequent assessment years also and other provisions of this Act shall apply for those years accordingly.

Alternate Minimum Tax: In case, the person has opted for this scheme, the provision of alternate minimum tax (AMT) u/s 115JC is not applicable. Consequently, any credit of AMT cannot be adjusted against tax liability computed u/s 115BAC.

TAXATION OF AOP/BOI

Total income of AOP/BOI is computed as per normal provisions of the Act with the following exception given u/s 40(ba) -

Interest to member: Any interest paid to members (either on capital or loan) is not allowed as deduction. However-

1. Where interest is paid by AOP/BOI to its members as well as interest is received by AOP/BOI from its members, then only net interest so paid is disallowed. However, no such adjustment shall be made where interest is paid to a member and received from another member.

E.g. X received ₹ 5,000 as interest from an AOP in which he is a member and paid ₹ 2,000 to such AOP. Then, ₹ 3,000 (being net interest) is disallowed in the hands of AOP. Whereas, if X paid ₹ 8,000 to such AOP, then nothing shall be disallowed in the hands of AOP.

2. Where interest is paid by AOP/BOI to any member or vice-versa on behalf of any other person, then such interest shall be allowed.

E.g. X, being Karta of X(HUF), received interest ₹ 5,000 from an AOP (in which he is a member) on loan given by his HUF, then ₹ 5,000 is not disallowed in the hands of AOP. Whereas if he received such interest on loan given by him from his own source, then such interest would be disallowed.

3. Where interest is paid by the AOP/BOI to any member (who is member in a representative capacity) or vice-versa, then such interest shall be allowed.

E.g. X a member of AOP on behalf of X (HUF), received ₹ 5,000 as interest on loan provided from his own source, then ₹ 5,000 is allowed in the hands of AOP. Whereas if he received such interest for HUF, then such interest would be disallowed.

Remuneration to member: Any remuneration (salary or bonus or by whatever name called) paid to member is

not allowed as deduction. Even remuneration paid to a member on behalf of any other person is disallowed.

Computation of tax liability of AOP

Computation of tax depends on –

- a. When share of members are known
- b. When share of members are unknown

When share of member is known [Sec. 167B(2)]

Case	Tax Rate
Long term capital gains	10% / 20%
Short term capital gain covered u/s 111A	15%
Income from lotteries, crossword, puzzles, etc.	30%
Any other income	
• When none of the member has taxable income excluding share from AOP/BOI	At which an individual is taxable (i.e. slab rate)
• When any member has taxable income excluding share from AOP/BOI	At maximum marginal rate of tax (Note)
• When any of the member is charged to tax at a rate higher than the maximum marginal tax rate	<u>Share of that member</u> At the rate at which such member is taxable <u>Balance income</u> At maximum marginal rate of tax

Note: *Maximum marginal rate* means the rate of income-tax (including surcharge and education cess) applicable in relation to the highest slab of income in the case of an individual, association of persons or, as the case may be, body of individuals as specified in the Finance Act of the relevant year [Sec. 2(29C)]

Special point: For A.Y.2021-22, maximum marginal rate of tax is 42.744% (30% +37% surcharge + 4% health and education cess)

When share of any member is unknown [Sec. 167B(1)]

Case	Tax Rate
Long term capital gains	10% / 20%
Short term capital gain covered u/s 111A	15 %
Income from lotteries, crossword, puzzles, etc.	30 %
Any other income	
• When none of the member has taxable income excluding share from AOP/BOI	At maximum marginal tax rate
• When any member has taxable income excluding share from AOP/BOI	
• When any of the member is charged to tax at a rate higher than the maximum marginal tax rate	At such higher rate

The individual share of the members of an AOP or BOI shall be deemed to be indeterminate or unknown if such shares are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.

Computation of member's share where share is known [Sec. 67A]

Income of AOP/BOI shall be shared by the members in the following manner –

• To the extent of interest, salary etc. given to member	Actual interest, salary, etc. of such member
• Balance income	In the agreed ratio

Notes:

- (a) Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, while computing his share chargeable under the head “Profits and gains of business or profession” in respect of his share in the income of the association or body, be deducted from his share [Sec. 67A(3)]
- (b) The share of a member in the income or loss of the association or body shall be apportioned under the various heads of income in the same manner in which the income or loss of the association or body has been determined under each head of income.
- (c) Where any deduction under chapter VIA (i.e. deduction u/s 80's) is allowed to the AOP/BOI, then deduction shall not be allowed to the member for sharing that income or payment.

Computation of member's share where share is unknown

Income of AOP/BOI shall not be included in total income of the member.

Computation of total income and tax liability of member

Situation	Tax treatment in the hands of member
When income of AOP is not taxable	Share from AOP is included in the income of member & tax is calculated usually, however rebate u/s 86 is not available
When income of AOP is taxable at individual rates	Share from AOP is included in his income and tax is calculated usually, however rebate u/s 86* is available
When income of AOP is taxable at maximum marginal rate of tax or any higher rate	Share from AOP is not included in his total income

* Rebate u/s 86 is calculated by applying the following steps –

Step 1	Calculate total income of member including share from AOP
Step 2	Calculate tax and cess
Step 3	Calculate average rate of tax, i.e. Average rate of tax = $\frac{\text{Tax, surcharge and cess after rebate} \times 100}{\text{Total income}}$

ALTERNATE MINIMUM TAX (AMT) [Sec. 115JC]

Applicable to

All assessee (other than company) who has claimed any deduction under:

- Sec. 80H to Sec. 80RRB (other than sec. 80P); or
- Sec.10AA
- Sec.35AD

Exception:

The provisions shall not apply to an individual or a HUF or an AOP or a BOI, whether incorporated or not, or an artificial juridical person, if the adjusted total income of such person does not exceed ₹ 20 lakh.

Taxpoint:

- ☐ The exception is not applicable in case of Firm and Limited Liability Partnership. That means, AMT is applicable on LLP / Firm (claiming deduction under aforesaid section) even though adjusted total income does not exceed ₹ 20 lakh.
- ☐ The provisions of this section shall not apply to a person who has exercised the option referred to in sec. 115BAC or 115BAD [alternative tax regime]

Scheme of Alternate Minimum Tax (AMT)

Step 1	Compute regular income tax liability (before Cess) of the assessee covered under these provisions	A	****
Step 2	Compute Adjusted Total income of the assessee i.e.		**** *
	Total income of the assessee	****	B
	Add:		
	• Deduction claimed u/s 80H to sec. 80RRB (other than sec. 80P)	***	C
	• Deduction claimed u/s 35AD less Depreciation u/s 32	***	D
	• Deduction u/s 10AA	***	E
	Adjusted Total Income	****	F

	Note: (i) If 'C', 'D' and 'E' is zero, then these provisions are not applicable to any assessee. (ii) if 'F' does not exceed Rs.20 lakh, then these provisions are not applicable in case of an Individual / HUF / AOP / BOI / Artificial juridical person. However, the provision is applicable on LLP / Firm.		
Step 3	Compute Alternate Minimum Tax (AMT) [Being 18.5% of Adjusted Total Income]	G = F * 18.5%	****
Step 4	Income Tax liability	Higher of A & G	****
	Add: Health & Education Cess		**
	Tax liability after Cess		****

Impact where AMT is applicable i.e., case where value of Step 3 is higher than value of Step 1

- Adjusted total income (as computed in step 2) shall be deemed as total income of the assessee.
- Tax liability of the assessee shall be 18.5% (+ surcharge + cess) of adjusted total income of the assessee. However, in case of a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange, AMT shall be computed considering 9% (instead of 18.5%) of adjusted total income.
- A report in Form 29C from a chartered accountant is required to be upload one month prior to the due date of furnishing of return of income u/s 139(1).
- All other provisions of the Act, like advance tax, interest, etc. is applicable to such assessee.

Provision Illustrated

Compute tax of the following assessee:

Particulars	Mr. W	Mr. X	Mr. Y	A LLP	B LLP
Gross Total Income being Business Income	15,00,000	25,00,000	27,00,000	32,00,000	8,00,000
Deduction u/s 80C	1,00,000	1,00,000	1,00,000	Nil	Nil
Deduction u/s G	25,000	1,00,000	Nil	1,00,000	1,00,000
Deduction u/s 80IE	7,75,000	Nil	8,00,000	Nil	2,00,000
Total Income	6,00,000	23,00,000	18,00,000	31,00,000	5,00,000
Regular Tax	32,500	5,02,500	3,52,500	9,30,000	1,50,000
Adjusted Total Income	13,75,000	23,00,000	26,00,000	31,00,000	7,00,000
Whether sec. 115JC is applicable or not 1. As adjusted total income does not exceed ₹ 20 lakh 2. As no deduction is claimed u/s 80H to 80RRB (other than sec. 80P) or u/s 10AA	No ¹	No ²	Yes	No ²	Yes
Alternate Minimum Tax (AMT) u/s 115JC [18.5% of adjusted total income]	NA	NA	4,81,000	NA	1,29,500
Tax (Higher of Regular Tax and AMT)	32,500	5,02,500	4,81,000	9,30,000	1,50,000
Add: Health & Education Cess	1,300	20,100	19,240	37,200	6,000
Tax and Cess Liability (Rounded off)	33,800	5,22,600	5,00,240	9,67,200	1,56,000

Tax credit for Alternate Minimum Tax [Sec. 115JD]

- The excess of alternate minimum tax paid over the regular income-tax payable of that year shall be allowed as tax credit.

Mathematically, tax credit available = Tax paid u/s 115JC – Regular Tax payable

- However, no interest shall be payable on the tax credit allowed.
- The amount of tax credit determined shall be carried forward and set off but such carry forward shall not be allowed beyond the 15th assessment year immediately succeeding the assessment year in which tax credit becomes allowable.
- The tax credit shall be allowed set-off in a year when regular tax becomes payable by the assessee.
- Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the alternate minimum tax payable u/s 115JC for that assessment year and the balance of the tax credit, if any, shall be carried forward. In other words, after setting off of AMT credit, tax liability of the year cannot be less than AMT for that year.
- The amount of tax credit in respect of any income-tax paid in any country or specified territory outside India u/s 90 or 90A or 91, allowed against the alternate minimum tax payable, exceeds the amount of the tax credit admissible against the regular income-tax payable by the assessee, then, while computing the amount of credit u/s 115JD, such excess amount shall be ignored.

If the amount of regular income-tax or the AMT is reduced or increased as a result of any order passed under this Act, the amount of tax credit allowed under this section shall also be varied accordingly

TAXATION OF COMPANY

Sec. 2(17) : Company

Company means:

- a. any Indian company; or
- b. any body corporate, incorporated under the laws of a foreign country; or
- c. any institution, association or body which is or was assessable or was assessed as a company for any assessment year on or before April 1, 1970; or
- d. any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Central Board of Direct Taxes to be a company.

Sec. 2(26) : Indian Company

An Indian company means a company formed & registered under the Companies Act, 1956 & includes

- a. a company formed and registered under any law relating to companies formerly in force in any part of India other than the state of Jammu & Kashmir and the Union territories specified in (c) infra;
- b. a company formed and registered under any law for the time being in force in the State of J&K;
- c. a company formed and registered under any law for the time being in force in the Union territories of Dadar & Nagar Haveli, Goa, Daman & Diu and Pondicherry;
- d. a corporation established by or under a Central, State or Provincial Act;
- e. any institution, association or body which is declared by the Central Board of Direct Taxes (CBDT) to be a company u/s 2(17).

In the aforesaid cases, a company, corporation, institution, association or body will be treated as an Indian company only if its registered office or principal office, as the case may be, is in India.

Domestic Company [Sec. 2(22A)]

Domestic company means:

- i) an Indian company; or
- ii) any other company, which in respect of its income liable to tax under the Act, has made prescribed arrangements for the declaration and payment of dividends (including dividend on preference share), payable out of such income, within India.

Prescribed arrangements for declaration and payment of dividends within India [Rule 27]

The arrangements to be made by a company for the declaration and payment of dividends (including dividends on preference shares) within India shall be as follows:

- a. The share-register of the company for all shareholders shall be regularly maintained at its principal place of business within India.
- b. The general meeting for passing the accounts of the previous year relevant to the assessment year and for declaring any dividends in respect thereof shall be held only at a place within India.

- c. The dividends declared, if any, shall be payable only within India to all shareholders.

Foreign Company [Sec. 2(23A)]

Foreign company means a company which is not a domestic company.

Company in which public are substantially interested [Sec. 2(18)]

A company is said to be a company in which the public are substantially interested (also known as widely held company):

1. **Government company:** A company owned by the Government or the Reserve Bank of India or in which not less than 40% of the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank; or
2. **A company u/s 8:** A company which is registered u/s 8 of the Companies Act, 2013; or
3. **Mutual benefit finance company:** A company
 - a. which carries on, as its principal business, the business of acceptance of deposits from its members; &
 - b. which is declared by the Central Government u/s 620A of the Companies Act, 1956, to be a *Nidhi* or Mutual Benefit Society; or
4. **Company in which shares are held by co-operative societies:** A company whose equity shares carrying not less than 50% of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were *throughout the relevant previous year* beneficially held by, one or more co-operative societies;
5. **Listed company:** A company which is not a private company as defined in the Companies Act, 1956, and the conditions specified either in item (A) or in item (B) are fulfilled, namely:—
 - (A) equity shares in the company were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India;
 - (B) equity shares in the company carrying not less than 50% (40% in case of an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power i.e. industrial company) of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by:
 - (a) the Government; or
 - (b) a corporation established by a Central, State or Provincial Act; or
 - (c) any company to which this clause applies or any subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.
6. **Company which is prescribed by Board:** A company having no share capital and if, having

regard to its objects, the nature and composition of its membership and other relevant considerations, it is declared by order of the Board to be a company in which the public are substantially interested. [Such company shall be deemed to be a company in which the public are substantially interested only for such assessment year or assessment years as may be specified in the declaration]; or

Rate of Tax for Company Assessee

Income of a company is taxable as under:

Short term capital gain covered u/s 111A	15%
Long term capital gain covered u/s 112A	10%
Other Long term capital gain	20%
Winning from lottery, cross-word puzzles, etc.	30%
Other Income	
– <u>In the case of a domestic company</u>	
➤ Where its total turnover or gross receipts during the previous year 2018-19 does not exceed ₹ 400crores	25%
➤ In other case	30%
– <u>In the case of a foreign company:</u>	
➤ Royalty received from Government or an Indian concern in pursuance of an agreement made by it with the Indian concern after March 31, 1961, but before April 1, 1976, or fees for rendering technical services in pursuance of an agreement made by it after February 29, 1964, but before April 1, 1976, and where such agreement has in either case been approved by Central Government	50%
➤ Other incomes	40%

Surcharge: The amount of tax computed as above shall be further increased by surcharge as per following table:

Total Income	Surcharge as a percentage of Income Tax	
	Domestic Company	Foreign Company
Income less than or equal to ₹ 1,00,00,000	Nil	Nil
Income exceeds ₹ 1 crore but does not exceed ₹ 10 crores	7%	2%
Income exceeds ₹ 10 crores	12%	5%

Health & Education Cess : 4% of ‘Tax liability after surcharge’ is also levied on every company.

Marginal Relief

Condition: Total income exceeds ₹ 1,00,00,000

Relief: Marginal relief is provided to ensure that the additional income tax payable including surcharge on excess of income over ₹ 1,00,00,000 is limited to the amount by which the income is more than ₹ 1,00,00,000

Similar relief is also available if income exceeds ₹ 10 crores. In that case, in the above, ₹ 1 crore shall be replaced with ₹ 10 crores

Tax on income of certain manufacturing domestic companies [Sec. 115BA]

Applicable to Domestic Company

Conditions:

1. The company has been set-up and registered on or after the 01-03-2016.
2. The company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and
3. The total income of the company has been computed:
 - (a) Without any deduction u/s 10AA or 32(1)(iia) or 32AC or 32AD or 33AB or 33ABA or 35(1)(ii) or 35(1)(iia) or 35(1)(iii) or 35(2AB) or 35(2AA) or 35AC or 35AD or 35CCC or 35CCD or under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” other than the provisions of sec. 80JJA;
 - (b) Without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred above; and
 - (c) Depreciation u/s 32 [other than 32(1)(iia)], is determined in the manner as may be prescribed.
 - Depreciation u/s 32(1)(ii) of any block of assets entitled to more than 40% shall be restricted to 40% on the written down value of such block of assets [Rule 5]

Rate of Tax: 25% + SC + Cess

Other Points

- ▶ Income taxable at special rate shall be taxable at special rate of tax applicable on that income. E.g., short term capital gain covered u/s 111A is taxable @ 15%.
- ▶ The loss referred to in the conditions shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.
- ▶ The scheme is optional. The option is exercised by the person in the prescribed manner¹ on or before the due date specified u/s 139(1) for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act. Further, once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.
- ▶ Where the person exercises option u/s 115BAA, the option under this section may be withdrawn.

Tax on income of certain domestic companies [Sec 115BAA]

Applicable to: Domestic Company

Conditions:

The total income of the company shall be computed:

- a. without any deduction u/s 10AA or 32(1)(ia) or 32AD or 33AB or 33ABA or 35(1)(ii) or 35(1)(ia) or 35(1)(iii) or 35(2AA) or 35(2AB) or 35AD or 35CCC or 35CCD or under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” other than the provisions of sec. 80JJAA or sec. 80M.

Exception:

In case of unit in the International Financial Services Centre, the deduction u/s 80LA shall be available to such Unit subject to fulfilment of the conditions contained in sec. 80LA.

- b. Without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred above; and
- c. Depreciation u/s 32 [other than 32(1)(ia)], is determined in the manner as may be prescribed.

Rate of Tax: 22% + SC @ 10% + Cess

Other Points

- ◆ Income taxable at special rate shall be taxable at special rate of tax applicable on that income. E.g., short term capital gain covered u/s 111A is taxable @ 15%.
- ◆ The loss referred to in the conditions shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.
- ◆ The scheme is optional. The option is exercised by the person in the prescribed manner¹ on or before the due date specified u/s 139(1) for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act. Further, once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.
- ◆ Where the person fails to satisfy the conditions in any previous year, the option shall become

invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

- ◆ Where a person has exercised the option u/s 115BAA, the provision of sec. 115JB (i.e. MAT) is not applicable.
- ◆ In case of a person, where the option exercised by it, u/s 115BAB has been rendered invalid due to violation of conditions contained in that section, such person may exercise option under this section.

Tax on income of new manufacturing domestic companies [Sec. 115BAB]

Applicable to: Domestic Company

Conditions:

- (a) The company has been set-up and registered on or after 01-10-2019, and has commenced manufacturing or production of an article or thing on or before 31-03-2023.
- (b) The business is not formed by splitting up, or the reconstruction, of a business already in existence.

Exception

- (i) Where business is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in sec. 33B, in the circumstances and within the period specified in that section.
- (c) The company does not use any machinery or plant previously used for any purpose.
 - ◆ Any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled:
 - A. such machinery or plant was not, at any time previous to the date of the installation used in India;
 - B. such machinery or plant is imported into India from any country outside India; and
 - C. no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.
 - ◆ Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed 20% of the total value of the machinery or plant used by the company, then, this condition shall be deemed to have been complied with.
- (d) The company does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction u/s 80-ID has been claimed and allowed.
- (e) The company is not engaged in any business other than the business of manufacture or production of any article or thing (*it includes the business of generation of electricity*) and research in relation to, or distribution of, such article or thing manufactured or produced by it.

Exception

The business of manufacture or production of any article or thing shall not include business of:

- (i) development of computer software in any form or in any media;
 - (ii) mining;
 - (iii) conversion of marble blocks or similar items into slabs;
 - (iv) bottling of gas into cylinder;
 - (v) printing of books or production of cinematograph film; or
 - (vi) any other business as may be notified by the Central Government in this behalf; and
- (f) The total income of the company has been computed:
- A. without any deduction u/s 10AA or 32(1)(iia) or 32AD or 33AB or 33ABA or 35(1)(ii) or 35(1)(iia) or 35(1)(iii) or 35(2AA) or 35(2AB) or 35AD or 35CCC or 35CCD or under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” other than the provisions of sec. 80JJAA or 80M.
 - B. Without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred above; and
 - C. Depreciation u/s 32 [other than 32(1)(iia)], is determined in the manner as may be prescribed.

Rate of Tax: 15% + SC @ 10% + Cess

Other Points

- ♦ Income taxable at special rate shall be taxable at special rate of tax applicable on that income. E.g., short term capital gain covered u/s 111A is taxable @ 15%.
- ♦ Where the total income of the person, 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 this Chapter, such income shall be taxed @ 22% and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income.
- ♦ The income-tax payable in respect of income being short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed @ 22%
- ♦ Where the person fails to satisfy the conditions in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.
- ♦ The loss referred to in the conditions shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

- ◆ The scheme is optional. The option is exercised by the person in the prescribed manner on or before the due date specified u/s 139(1) for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act. Further, once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.
- ◆ Where a person has exercised the option u/s 115BAB, the provision of sec. 115JB (i.e. MAT) is not applicable.
- ◆ If any difficulty arises regarding fulfilment of the conditions, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery. Every guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.
- ◆ Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Special Point :

- ◆ In case the aforesaid arrangement involves a specified domestic transaction referred to in sec. 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in sec. 92F(ii).
- ◆ The amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person. Such income is computed @ 30%

[Sec. 115BBD] : Tax on certain dividends received from foreign companies

- ◆ Dividend [excluding dividend referred to in sec. 2(22)(e)] received by an Indian company from a specified foreign company is taxable @ 15%
- ◆ No deduction in respect of any expenditure or allowance shall be allowed to the assessee while computing such dividend income.
- ◆ *Specified Foreign Company* means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company.

Carry Forward and Set-off of Losses in the case of Closely Held Companies [Sec. 79]

In case of a company in which public are not substantially interested (other than eligible start-up company referred below), no loss shall be carried forward and set off against the income of the previous year, unless at least 51% of the voting power of the company are beneficially held (on the last day of the previous year in which the loss is sought to be set off) by the same person(s) who held at least 51% of the shares on the last day of the financial year in which the loss was incurred.

Special Point :

- (a) **Losses under the head ‘Capital gains’:** Sec. 79 applies to all losses, including losses under the head Capital gains.
- (b) **Unabsorbed depreciation:** The above provision is not applicable on unabsorbed depreciation, such unabsorbed depreciation shall be allowed to be carried forward.

Option for eligible start-up company⁴

In the case of eligible start-up company, not being a company in which the public are substantially interested, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if:

- All the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred continue to hold those shares on the last day of such previous year; and
- Such loss has been incurred during the period of 7 years beginning from the year in which such company is incorporated

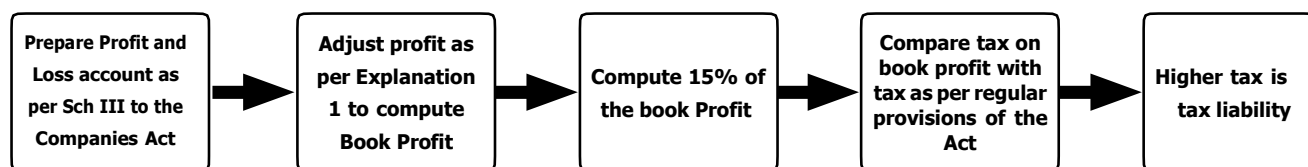
Exceptions: However, change in the share holding due to following reasons shall not be considered-

- 1. Transfer due to death:** Where a change in the said voting power takes place in a previous year consequent upon the death of a shareholder
- 2. Transfer by way of gift:** Where a change in the said voting power takes place in a previous year on account of transfer of shares by way of gift to any relative of the shareholder making such gift
- 3. Amalgamation or demerger of foreign company:** Any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that 51% shareholders of the amalgamating or demerged foreign company continues to be the shareholder of the amalgamated or the resulting foreign company.
- 4. Insolvency and Bankruptcy Code:** Where change in the shareholding is taken place pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
- 5. Distressed Company:** The provision is not applicable to a company, and its subsidiary and the subsidiary of such subsidiary, where:

- (i) the National Company Law Tribunal (NCLT), on an application moved by the Central Government u/s 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, u/s 242 of the said Act; and
- (ii) a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal u/s 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Minimum Alternate Tax (MAT) or Tax on Book Profit [Sec. 115JB]

The objective of introduction of MAT is to bring into the tax net “zero tax companies” which in spite of having earned substantial book profits and having paid handsome dividends, do not pay any tax due to various tax concessions and incentives provided under the Income-tax Law.



Applicable to

Any company (whether Indian or Foreign, resident or non-resident, closely held or widely held company)

Circumstance in which MAT is applicable: Where the income-tax, payable on the total income (being computed under this Act in respect of any previous year) is less than 15% of its book profit

Treatment:

- Such book profit shall be deemed to be the total income of the assessee; and
- The tax payable by the assessee on such total income shall be the amount of income-tax at the rate of 15% (plus surcharge, Health & Education cess)

Other Points

- ♦ **Unit in IFSC:** Where the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange, the rate of MAT shall be 9%
- ♦ **Book Profit should be as per Schedule III to Companies Act, 2013:** Every company shall prepare its Statement of Profit and Loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013. However, in case of banking, insurance or electricity company, such statement should be prepared as per provisions of the Act which governs such company.
 - While preparing the annual accounts:
 - (a) the accounting policies;

- (b) the accounting standards followed for preparing such accounts;
- (c) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts and laid before the company at its annual general meeting.

- ♦ **When assessing officer has power to alter profit:** Where the statement of profit and loss has been prepared in accordance with Schedule III to the Companies Act, 2013 and which has been scrutinised and certified by the statutory auditors and relevant authorities, the Assessing Officer has no power to scrutinise net profit in the statement of profit and loss except to the extent provided in Explanation [Apollo Tyres Ltd. vs. CIT (SC)]
- ♦ **Report from Accountant:** Every company to which this section applies, shall upload a report in the prescribed form [Form 29B] from an accountant, certifying that the book profit has been computed in accordance with the provisions of this section one month prior to the due date of the filing of the return of income u/s 139 or along with the return of income furnished in response to a notice u/s 142(1)
- ♦ **Life Insurance Business:** The provision of this section shall not apply to any income accruing or arising to a company from life insurance business referred to in sec. 115B.
- ♦ **Companies opting for sec. 115BAA and sec. 115BAB:** The provision of this section shall not apply to a person who has exercised the option referred to u/s 115BAA and u/s 115BAB.
- ♦ **Foreign Company:** The provisions of this section shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if:
 - (i) The assessee is a resident of a country or a specified territory with which India has an agreement referred to in sec. 90 or the Central Government has adopted any agreement u/s 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement; or
 - (ii) the assessee is a resident of a country with which India does not have an agreement of the nature referred above and the assessee is not required to seek registration under any law for the time being in force relating to companies.

Special Point : The MAT provision is not applicable to an assessee, being a foreign company, where its total income comprises solely of profits and gains from business referred to in section 44B or 44BB or 44BBA or 44BBB and such income has been offered to tax at the rates specified in those sections.

- ◆ **No impact of MAT on losses:** Nothing shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sec. 32(2) or 72(1)(ii) or 73 or 74 or 74A(3).
- ◆ **Other provision will apply:** All other provisions of this Act like Advance Tax, interest, etc. shall apply to every company, mentioned in this section.

Computation and Meaning of Book Profit [Explanation 1 to sec. 115JB]

Book profit means the profit as shown in the statement of profit and loss for the relevant previous year:

As **increased** by (if following amount is debited in the Statement of Profit & Loss):

- (a) the amount of income-tax paid or payable, and the provision therefore;
 - ◆ It includes:
 - ▶ Any interest under Income Tax Act;
 - ▶ Surcharge and cess on income-tax.
 - ▶ It does not include:
 - ▶ Penalty paid or payable under this Act
 - ▶ Any tax, interest or penalty paid or payable under Wealth Tax Act or other Act;
 - ▶ Securities Transaction Tax;
- (b) the amounts carried to any reserves, by whatever name called;
- (c) the amount set aside to provisions made for meeting liabilities, other than ascertained liabilities;
 - ◆ Any provision made to meet unascertained liabilities like provision for gratuity or future losses, etc. should be added back. However, if the provision for gratuity has been made on the basis of actuarial valuation, it becomes ascertained liability, hence should not be added back [Shree Sajjan Mills Ltd. vs. CIT (SC)]
- (d) the amount by way of provision for losses of subsidiary companies;
- (e) the amount or amounts of dividends paid or proposed;
- (f) the amount or amounts of expenditure relatable to any income to which sec. 10 or sec. 11 or sec. 12 apply.
- (g) the amount or amounts of expenditure relatable to income being share of profit from AOP, if such share is exempt u/s 86
- (h) expenditure relating to following income of a foreign company if tax payable on such income under normal provision is less than 15%:
 - (A) the capital gains arising on transactions in securities; or
 - (B) the interest, royalty or fees for technical services chargeable to tax u/s 115A to 115BBE

- (i) notional loss on transfer of a capital asset, being share or a special purpose vehicle to a business trust in exchange of units allotted by the trust referred to in sec. 47(xvii) or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in sec. 47(xvii)
- (j) expenditure relatable to income of royalty in respect of patent chargeable to tax u/s 115BBF
- (k) the amount of depreciation
- (l) the amount of deferred tax and provision thereof
- (m) the amount set aside as provision for diminution in the value of any asset (like asset written-off, etc.)
- (n) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset (if not credited to the statement of Profit and Loss)
- (o) gain on transfer of units referred to in sec.47(xvii) computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit or loss, as the case may be;

As reduced by:

- (i) the amount withdrawn from any reserve or provision if any such amount is credited to the statement of profit and loss.
 - ♦ An amount withdrawn from reserve being created before 1-4-1997 otherwise than by way of a debit to the statement of profit and loss shall not be reduced.
 - ♦ An amount withdrawn from reserves created or provisions made on or after 1-4-1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) in that year.
- (ii) the amount of income to which any of the provisions of sec. 10 or sec. 11 or sec. 12 apply, if any such amount is credited to the statement of profit and loss.
- (iii) share of profit from AOP, if such share is exempt u/s 86
- (iv) following income of a foreign company if tax payable on such income under normal provision is less than 15%:
 - ♦ the capital gains arising on transactions in securities; or
 - ♦ the interest, royalty or fees for technical services chargeable to tax u/s 115A to 115BBE
- (v) the amount representing,—
 - (A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in sec.47(xvii); or
 - (B) notional gain resulting from any change in carrying amount of said units; or
 - (C) gain on transfer of units referred to in sec.47(xvii), if any, credited to the statement of profit and loss; or

- (vi) the amount of loss on transfer of units referred to in sec.47(xvii) computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit or loss, as the case may be;
- (vii) the amount of income by way of royalty in respect of patent chargeable to tax u/s 115BBF;
- (viii) the amount of depreciation debited to the statement of profit and loss (excluding the depreciation on account of revaluation of assets);
- (ix) the amount withdrawn from revaluation reserve and credited to the statement of profit and loss, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred above;
- (x) the amount of brought forward loss or unabsorbed depreciation, whichever is less as per books of account.
 - ♦ the loss shall not include depreciation;
 - ♦ the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation, is nil;

Exception:

The **aggregate** (not lower) amount of unabsorbed depreciation & loss brought forward shall be reduced, in case of a:

- a. company, and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government u/s 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government u/s 242 of the said Act;
- b. company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under Insolvency and Bankruptcy Code, 2016
- (xi) the amount of deferred tax, if any such amount is credited to the statement of profit and loss
- (xii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Net worth means paid up capital + free reserve

Tax Credit in respect of Tax Paid on Deemed Income [Sec. 115JAA]

- ♦ Where any amount of tax is paid u/s 115JB by an assessee, being a company, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section. [Sec. 115JAA(1A)]
- ♦ The tax credit to be allowed as above shall be the difference of the tax paid for any assessment year u/s 115JB and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act. However, no interest shall be payable on the tax credit allowed.

Mathematically, tax credit available = Tax paid u/s 115JB - Tax payable as per other provisions of the Act

- ♦ The amount of tax credit determined shall be carried forward and set off but such carry forward shall not be allowed beyond the 15 assessment years immediately succeeding the assessment year in which tax credit becomes allowable.
- ♦ The tax credit shall be allowed set-off in a year when tax becomes payable on the total income computed in accordance with the provisions of this Act other than sec. 115JB.
- ♦ Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of sec. 115JB for that assessment year. In other words, after setting off of MAT credit, tax liability of the year cannot be less than tax would have been payable u/s 115JB for that year.
- ♦ The amount of tax credit in respect of any income-tax paid in any country or specified territory outside India u/s 90 or 90A or 91, allowed against the minimum alternate tax, exceeds the amount of the tax credit admissible against the regular income-tax payable by the assessee, then, while computing the amount of credit, such excess amount shall be ignored.

Example

- a. Tax paid in foreign country: ₹ 70/-
- b. Tax payable u/s 115JB: ₹ 75/-
- c. Tax payable under other provisions of the Act: ₹ 10/-

Then,

Foreign tax credit to the extent of ₹ 70/- is available for discharging tax liability u/s 115JB.

While calculating credit u/s 115JAA for subsequent year, ₹ 60/- shall be ignored and credit of ₹ 5 is available as shown below:

Tax payable under other provisions of the Act	A	₹ 10
Less: Foreign Tax Credit	B	₹ 10
Tax Payable after adjustment	C	Nil
Tax payable u/s 115JB	D	₹ 75
Less: Foreign Tax Credit	E	₹ 70

Tax Payable after adjustment	F	₹ 5
MAT Credit available without considering aforesaid provision	D – A	₹ 65
Credit not available due to aforesaid provision	E – B	₹ 60
Credit available in the subsequent year(s)	F – C	₹ 5

- ♦ Where as a result of an order, the amount of tax payable is reduced or increased, the amount of tax credit allowed under this section shall also be increased or reduced accordingly.
- ♦ Aforesaid provisions do not apply to a limited liability partnership which has been converted from a private company or unlisted public company.
- ♦ The provisions of this section shall not apply to a person who has exercised the option u/s 115BAA.

MAT on Ind AS compliant Financial Statement [Sec. 115JB(2A)]

A company whose financial statements are drawn up in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the book profit (as computed above) shall be further:

- (a) increased by all amounts credited to other comprehensive income in the statement of profit and loss under the head “Items that will not be re-classified to profit or loss”;
- (b) decreased by all amounts debited to other comprehensive income in the statement of profit and loss under the head “Items that will not be re-classified to profit or loss”;
 - ♦ No adjustment shall be made for the amount credited or debited to other comprehensive income under the head “Items that will not be re-classified to profit or loss” in respect of—
 - (i) revaluation surplus for assets in accordance with the Indian Accounting Standards 16 and Indian Accounting Standards 38; or
 - (ii) gains or losses from investments in equity instruments designated at fair value through other comprehensive income in accordance with the Indian Accounting Standards 109;
 - ♦ However, the book profit of the previous year in which the asset or investment referred above is retired, disposed, realised or otherwise transferred shall be increased or decreased, as the case may be, by the amount or the aggregate of the amounts referred above for the previous year or any of the preceding previous years and relatable to such asset or investment.
- (c) increased by amounts or aggregate of the amounts debited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in accordance with Appendix A of the Indian Accounting Standards 10;
- (d) decreased by all amounts or aggregate of the amounts credited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in accordance with Appendix A of the Indian Accounting Standards 10.

MAT in case of demerger [Sec. 115JB(2B)]

In the case of a resulting company, where the property and the liabilities of the undertaking being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computation of book profit of the resulting company.

First time adoption of Ind AS [Sec. 115JB(2C)]

In case of Ind AS compliant company, the book profit of the year of convergence and each of the following 4 previous years, shall be further increased or decreased, as the case may be, by 1/5th of the transition amount.

- ♦ “Transition Amount” means the amount or the aggregate of the amounts adjusted in the other equity (excluding capital reserve, and securities premium reserve) on the convergence date but not including the following:
 - A. Aggregate of the amounts adjusted in the other comprehensive income on the convergence date which shall be subsequently re-classified to the profit or loss;
 - B. Revaluation surplus for assets in accordance with the Indian Accounting Standards 16 and Indian Accounting Standards 38 adjusted on the convergence date;
 - C. Gains or losses from investments in equity instruments designated at fair value through other comprehensive income in accordance with the Indian Accounting Standards 109 adjusted on the convergence date;
 - D. Adjustments relating to items of property, plant and equipment and intangible assets recorded at fair value as deemed cost in accordance with paragraphs D5 and D7 of the Indian Accounting Standards 101 on the convergence date;
 - E. Adjustments relating to investments in subsidiaries, joint ventures and associates recorded at fair value as deemed cost in accordance with paragraph D15 of the Indian Accounting Standards 101 on the convergence date; and
 - F. Adjustments relating to cumulative translation differences of a foreign operation in accordance with paragraph D13 of the Indian Accounting Standards 101 on the convergence date.
- ♦ The book profit of the previous year in which the asset or investment referred to in (B) to (E) (*supra*) is retired, disposed, realised or otherwise transferred, shall be increased or decreased, as the case may be, by the aggregate of the amounts relatable to such asset or investment.
- ♦ The book profit of the previous year in which the foreign operation referred to in (F) is disposed or otherwise transferred, shall be increased or decreased, as the case may be, by the aggregate of the amounts relatable to such foreign operations.
- ♦ “Year of Convergence” means the previous year within which the convergence date falls;
- ♦ “Convergence Date” means the first day of the first Indian Accounting Standards reporting period as defined in the Indian Accounting Standards 101.

Tax on Distributed Income to Shareholders [Sec. 115QA]

The provision are enumerated here-in-below:

- (1) The assessee is a Domestic company
- (2) The assessee-company has distributed income on buy back of its own shares from its shareholders
 - ♦ “Buy-back” means purchase by a company of its own shares in accordance with the provisions of any law for the time being in force relating to companies
 - ♦ “Distributed income” means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed.
- (3) Such company shall be liable to pay additional income-tax @ 20% (+ surcharge + cess) on the distributed income. Such tax is irrespective of the fact that the company is not liable for paying income tax on its income.
- (4) The principal officer of the domestic company and the company shall be liable to pay the tax to the credit of the Central Government within 14 days from the date of payment of any consideration to the shareholder on buy-back of shares.
- (5) The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.
- (6) No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the income which has been charged to tax under this section or the tax thereon.

Interest Payable for Non-payment of Tax by Company [Sec. 115QB]

Where the principal officer of the domestic company and the company fails to pay the tax on the aforesaid distributed income within 14 days, he or it shall be liable to pay simple interest @ 1% for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

When Company is Deemed to be Assessee in Default [Sec. 115QC]

If any principal officer of a domestic company and the company does not pay tax on distributed income in accordance with the provisions of section 115QA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply

TAX ON INCOME FROM PATENT [Sec. 115BBF]

Where the total income of an eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, tax @ 10% shall be payable on such royalty income.

- ♦ *Eligible Assessee* means a person **resident** in **India** and who is a patentee;
- ♦ *Patentee* means the person, being the true and first inventor of the invention, whose name is entered on the patent register as the patentee, in accordance with the Patents Act, and includes every such person, being the true and first inventor of the invention, where more than one person is registered as patentee under that Act in respect of that patent.
- ♦ *Developed* means at least 75% of the expenditure incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970
- ♦ *Royalty*, in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gains” or consideration for sale of product manufactured with the use of patented process or the patented article for commercial use) for the:
 - (i) transfer of all or any rights (including the granting of a licence) in respect of a patent; or
 - (ii) imparting of any information concerning the working of, or the use of, a patent; or
 - (iii) use of any patent; or
 - (iv) rendering of any services in connection with the activities referred above
- ♦ *Lump sum* includes an advance payment on account of such royalties which is not returnable.

Other Provisions

- ♦ *No deduction for expenditure*: No deduction in respect of any expenditure or allowance shall be allowed to the eligible assessee in computing his royalty income.
- ♦ *Option to the assessee*: The eligible assessee is required to exercise the option for taxation of such royalty income in accordance with the provisions of this section, in the prescribed manner, on or before the due date for furnishing the return of income for the relevant previous year.
- ♦ *Concessional Rate is not applicable*: Where an eligible assessee opts for taxation of his royalty income in accordance with the provision of this section and he offers the royalty income for any of the 5 assessment years relevant to the previous year succeeding the previous year not in accordance with the provisions this section, then, the assessee shall not be eligible to claim the benefit of this section for 5 assessment years subsequent to the assessment year relevant to the previous year in which such income has not been offered to tax in accordance with this section.

TAX ON INCOME FROM TRANSFER OF CARBON CREDITS [SEC. 115BBG]

Where the total income of an assessee includes any income by way of transfer of carbon credits, tax @ 10% shall be payable on the income by way of transfer of carbon credits

- ♦ *Carbon credit* in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price.
- ♦ *No deduction for expenditure:* No deduction in respect of any expenditure or allowance shall be allowed to the assessee while computing his income by way of transfer of carbon credit