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Analysis of S.115BA- tax @ 25% optional for new companies set up or registered on or after 1st April, 2016.

Chapter of Income Tax Act, 1961

Relevant Chapter of income Tax Act, 1961 is THE Chapter XII that consists of sections 110 to 115BBG under heading "DETERMINATION OF TAX IN CERTAIN SPECIAL CASES.

S. 115BA, 115BAA and S.115BAB are new provisions of options provided to certain specified categories of companies. The provisions of these sections starts with non-abstain clause and also subject to clause , for example:

Notwithstanding anything contained in this Act but ⁴[subject to the other provisions of this Chapter, other than those mentioned under section 115BAA and section 115BAB],

Therefore, provisions of Chapter XII (subject to some exceptions) will apply and other provisions of the Act will not apply, if inconsistent with provisions of this section as per one view and will not apply, as per another possible view.

The provisions seems very confusing, involving many contingencies in near future and in long-term. Also contingencies due to past assessments and disputes. Furthermore, every year there are changes in provisions and new incentives may be introduced. Therefore, decision to opt for any of new provision should be after very careful examination of facts and circumstances, disputes in earlier years and expectation in medium to long-term about plans of company and its profitability.

It is also not clear about how the income will be computed so far allowable deductions are concerned. In computation related provisions only what will not be allowed is provided and for depreciation new prescription will apply. The changes noticed relating to depreciation are discussed later on in this write-up.

The first provision in this category of new provisions being provision of S.115BA are reproduced below, in left column of table, with highlights added for easy analysis and in right column short remarks and observations are provided and some more discussions are made below the table on important aspects :

From provision	Remarks and observations
³ [Tax on income of certain manufacturing domestic companies]	Meaning of 'domestic company' is also important. See note for

	brain storming given in last.
115BA. (1) <u>Notwithstanding anything contained in this Act but</u> ⁴ <u>[subject to the other provisions of this Chapter, other than those mentioned under section 115BAA and section 115BAB], the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent., if the conditions contained in sub-section (2) are satisfied.</u>	First assessment year can be AY 2017-18 It is optional. Rate of tax will be 25%. Compliance of conditions is must, failure will deny benefit from year of failure.
(2) For the purposes of sub-section (1), <u>the following conditions shall apply, namely:-</u>	
(a) the company has been set-up and <u>registered on or after the 1st day of March, 2016;</u>	Cumulative conditions are for set-up and registered on or after 01.03.2016. This is likely to raise disputes.
(b) the <u>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</u>	Engaging in any other business will disqualify the company. It is advisable to keep objects clause also restricted to avoid disputes. Because an object clause for other business can be considered for company being set up for other business.
(c) the total income of the company has been computed,- (i) <u>without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or subsection (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" other than the provisions of section</u>	Major incentives which are available cannot be claimed. Exception is about deduction for additional/new employment as per S. 80JJAA which may not be significant. Incentives are briefly discussed later on.

<u>80JJAA;</u>	
(ii) <u>without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and</u>	Loss brought forwarded or the element of loss relating to such incentives will not be set off. In fact as per other provisions these are considered as lapsed.
(iii) <u>depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.</u>	For depreciation new prescription is expected.
(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) <u>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.</u>	Specified loss or its element is deemed allowed in other words such loss is lapsed on exercise of option.
(4) Nothing contained in this section shall apply unless the <u>option is exercised by the person in the prescribed manner</u> on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act:	Form no. 10-IB u/r 21AD
Provided that once the option has been exercised for any previous year, <u>it cannot be subsequently withdrawn for the same or any other previous year.</u>]	No revert back except for opting S.115BAA as per next proviso.
⁵ [Provided further that where the person exercises option under <u>section 115BAA, the option under this section may be withdrawn.</u>]	New conditions will apply on exercise of such option.

Notes:-

1. Inserted vide [THE FINANCE ACT, 2016](#) w.e.f. 1st day of April, 2017.
2. Substituted vide [THE FINANCE ACT, 2018](#), w.e.f. 1st day of April, 2017, before it was read as, "provisions of section 111A and section 112"
3. Substituted vide [Taxation Laws \(Amendment\) Act, 2019](#) w.e.f. 01-04-2020 before it was read as
¹"[Tax on income of certain domestic companies."
4. Substituted vide [Taxation Laws \(Amendment\) Act, 2019](#) w.e.f. 01-04-2020 before it was read as "subject to the ²[other provisions of this Chapter]"

5. Inserted vide [Taxation Laws \(Amendment\) Act, 2019](#) w.e.f. 01-04-2020

Intervening periods:

If a company has opted from AY 2017-18 then some changes applicable in intervening periods will also have to be considered to ascertain impact, if any.

Benefits which will be denied on opting S. 115BA are:

- (i) without any deduction under the provisions of section 10AA relating to [Special provisions in respect of newly established Units in Special Economic Zones](#).
clause (iia) of sub-section (1) of section 32 relating to initial depreciation.

section 32AC relating to investment in new plant and machinery

section 32AD relating to investment in new plant and machinery in notified backward area in certain states.

section 33AB relating to tea, coffee and rubber development accounts.

section 33ABA relating to site restoration fund.

Some clauses of S. 35 relating to scientific research namely

Clause (i) sub-clause (ii) relating to weighted deduction for contribution to scientific research association

or sub-clause (iia) paid to company for scientific research ,

or sub-clause (iii) – payment to research association

or sub-section (2AA) relating to payments made to National Laboratory , university or institute of technology etc.

or subsection (2AB) of section 35 relating to scientific research by a company engaged in specified businesses.

section 35AC relating to expenditure on eligible projects or schemes etc.

section 35AD option exercised relating to specified business.

section 35CCC expenditure on agricultural extension project.

section 35CCD expenditure on skill development projects

and

under any provisions of Chapter VI-A under the heading “C.-Deductions in respect of certain incomes” other than the provisions of section 80JJAA;

Therefore, for decision making it is required to ascertain inter alia:

How much loss relating to special or incentive deductions was allowed in past which remained un-allowed and forms part of brought forwarded loss in the year in which one opts to avail this section.

Many might have opted from AY 2017-18 and some might be waiting to get deduction or set off of remaining period of incentive or amount carried forwarded to be set off or to be reduced to low amount so that forgoing the benefit is lesser beneficial and lower rate of tax is more beneficial.

Initial depreciation u/s 32.1.iiia is in nature of incentive. This will not be available if S.115BA is opted.

S.80JJAA relating to weighted deduction for wages and salary paid to additional / new employees will continue.

S.80M newly reinserted has not been allowed for S.115BA whereas it has been allowed for other similar sections 115BAA and 115BAB as per amendment vide [Finance Act, 2020 dated 27-03-2020](#) w.e.f. 01-04-2021. **There seems to be an omission to insert S.80M in clause © of sub-section (2) of S. 115BA.**

Drawback of option:

Main draw back of this section is that once opted, one cannot change it. However, on insertion of new section 115BAA, by exercising option of S.115BAA one can withdraw option u/s. 115BA. However then limitations under S. 115BAA will apply and those are also stringent conditions.

Changes relating to depreciation vide **NOTIFICATION NO. 82/2020 dated 1st October, 2020** :

Rate of depreciation on any block of assets which are more than 40% shall be restricted to 40% on exercise of option for lower rate of tax..

WDV b/f shall be increased by the amount of lapsed initial depreciation forming part of b/f depreciation.

Domestic company -an interesting issue for brain storming:

Meaning of domestic company highlighted for relevant portion:

From provision with highlights added	Remarks
2. In this Act, unless the context otherwise requires,-	Contextual phrase is used but

	there is a definite meaning provided.
[(22A) "domestic company" means <u>an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income ;]</u>	<p>Questions for brain storming are:</p> <p>What are the prescribed arrangements for the declaration and payment, within India, of the dividends?.</p> <p>As per general understanding recommendation of dividend by board of directors and arrangement for payment to shareholders are arrangements for the purpose of this meaning and any other purpose.</p>

Similar wordings or wordings on similar lines are also used in annual finance Acts which prescribed rate of tax for domestic company.

Can it be said that a company who has not declared and / or made arrangements for payment of dividends is not a domestic company, as per meaning?

And therefore, whether such company is not liable to pay tax?

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Analysis of S.115BAB- tax @ 15% optional for companies lot of care and considerations are required.

Chapter of Income Tax Act, 1961

Relevant Chapter of income Tax Act, 1961 is THE Chapter XII that consists of sections 110 to 115BBG under heading "DETERMINATION OF TAX IN CERTAIN SPECIAL CASES.

S. 115BA, 115BAA and S.115BAB are new provisions of options provided to certain specified categories of companies. The provisions of these sections starts with 'notwithstanding' and also 'subject to' for example:

Notwithstanding anything contained in this Act but ⁴[subject to the other provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA],

Therefore, provisions of Chapter XII (subject to some exceptions) will apply and other provisions of the Act will not apply, if inconsistent with provisions of this section as per one view and will not apply, as per another possible view.

The provisions seems very confusing, involving many contingencies in near future and in long-term. Also contingencies due to past assessments and disputes.

Furthermore, every year there are changes in provisions and new incentives may be introduced. Therefore, decision to opt for any of new provision should be after very careful examination of facts and circumstances, disputes in earlier years and expectation in medium to long-term about plans of company.

It is also not clear about how the income will be computed so far allowable deductions are concerned. In computation related provisions only what will not be allowed is provided and for depreciation new prescription will apply. The changes noticed are discussed later on in this write-up.

Third provision in this category of new provisions being provision of S.115BAA are reproduced below, in left column of table, with highlights added for easy analysis and in right column short remarks and observations are provided and some more discussions are made below the table on important aspects :

¹[Tax on income of new manufacturing domestic companies.

From provisions :	Observations and remarks
115BAB. (1) <u>Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of fifteen per cent., if the conditions contained in sub-section (2) are satisfied:</u>	<p>Meaning of 'domestic company' is also important. See a note for brain storming.</p> <p>Rate of 15 % at option of company.</p> <p>From 01.04.2020 (assessment year 2020-21 on wards</p> <p>Conditions as per sub-section (2).</p>
<u>Provided that 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 at the rate of twenty-two per cent. and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income:</u>	<p>Income derived from manufacture or production of article or thing and incidental thereto will be eligible for 15% tax</p> <p>Any other income will be taxed @ 22% without allowing any deduction. Except where any special rate is applicable.</p>

Provided further that the income-tax payable in respect of the income of the person deemed so under second proviso to sub-section (6) <u>shall be computed at the rate of thirty per cent.:</u>	Excessive profits derived from transaction with related parties above profits as per arm's length pricing will be deemed a separate income and will be taxable @30%
Provided also that the income-tax payable in respect of income being short term capital gains derived from transfer of a capital asset on which <u>no depreciation is allowable</u> under the Act shall be computed at the rate of <u>twenty-two per cent.</u>	Short-term capital gains on assets which no depreciation is allowable shall be taxed @ 22%.
Provided also that where the <u>person fails to satisfy the conditions</u> contained in sub-section (2) in any previous year, the <u>option shall become invalid</u> 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.	
(2) For the purposes of sub-section (1), the following conditions shall apply, namely:-	
(a) the company has been <u>set-up and registered on or after the 1st day of October, 2019, and has commenced manufacturing or production of an article or thing on or before the 31st day of March, 2023 and,-</u>	Cumulative conditions are for set-up and registered on or after 01.10.2019 and commencement of manufacture or production before 31.10.2023.
(i) <u>the business is not formed by splitting up, or the reconstruction, of a business already in existence:</u>	Old business is not eligible except on compliance of conditions of S.33B and other conditions mentioned in this section
Provided that this condition shall not apply in respect of a company, business of which 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 section 33B, in the circumstances and within the period specified in the said section;	

(ii) <u>does not use any machinery or plant previously used for any purpose.</u>	Machinery or plant (used in India) not to be used. Used outside India by any other person, can be used subject to conditions laid in Explanation 1
Explanation 1.-For the purposes of sub-clause (ii), any machinery or plant which <u>was used outside India by any other person</u> shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:-	
(A) such machinery or plant was not, <u>at any time previous to the date of the installation used in India;</u>	Not use in India.
(B) such machinery or plant is <u>imported into India</u> from any country outside India; and	Imported old machinery allowed subject to conditions of no depreciation allowed or allowable prior to installation by company opting for this section.
(C) <u>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</u> prior to the date of the installation of machinery or plant by the person.	
Explanation 2.-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 <u>total value of such machinery or plant or part thereof does not exceed twenty per cent. of the total value of the machinery or plant used by the company</u> , then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with;	Old plant and machinery and parts allowed up to 25% of total value of such items.
(iii) does not use any building previously used as a hotel or a convention Centre, as the case may be, <u>in respect of which deduction under section 80-ID has been claimed and allowed.</u>	Use of certain buildings earlier used as hotel and convention Centre will attract disqualification if deduction u/s 80ID was claimed and allowed.
Explanation.-For the purposes of this sub-clause, the expressions <u>"hotel" and "convention centre"</u> shall	

have the meanings respectively assigned to them in clause (a) and clause (b) of sub-section (6) of section 80-ID;	
(b) the company is not engaged in any business <u>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.</u>	<p>Restrictions on business. Engaging in any other business will render disqualified.</p> <p>Type of business including incidental activities allowed are also restricted in scope and can be a reason of different views. For example use of words 'or distribution of' is a restricted expression than selling.</p>
<p>Explanation.-For the removal of doubts, it is hereby clarified that the business of manufacture or production of any article or thing referred to in clause (b) <u>shall not include business of,-</u></p> <p>(i) development of <u>computer software</u> in any form or in any media;</p> <p>(ii) <u>mining</u>;</p> <p>(iii) <u>conversion of marble blocks or similar items into slabs</u>;</p> <p>(iv) <u>bottling of gas</u> into cylinder;</p> <p>(v) <u>printing of books or production of cinematograph film</u>; or</p> <p>(vi) <u>any other business as may be notified</u> by the Central Government in this behalf; and</p>	<p>Businesses not eligible for this section are specified.</p> <p>It seems that old bias against some businesses still continue, although there are changes in situations.</p> <p>Furthermore there is no justification on any ground, to exclude these businesses. All these activities also involve manufacture or production and are helpful in other permitted manufacture and production activities.</p>
(c) <u>the total income of the company has been computed,-</u>	Manner of computation:
(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of ² [Chapter VI-A other than the provisions of section 80JJAA or section 80M];	Major incentives are denied. Exception is about deduction for additional/ new employment as per S. 80JJAA, and newly inserted S. 80M
(ii) without set off of any loss or allowance for	Loss brought forwarded or the

unabsorbed depreciation <u>deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i).</u>	element of loss relating to incentives denied will not be set off and carried forward. If a carry forward is claimed, concessional rate of tax will not be allowed.
Explanation.-For the removal of doubts, it is hereby clarified that in case of an amalgamation, <u>the option under sub-section (7) shall remain valid in case of the amalgamated company only and if the conditions contained in sub-section (2) are continued to be satisfied by such company; and</u>	In case of Amalgamations option under this section vide sub-section (7) shall remain in case of the amalgamated company only, subject to compliance of conditions in sub-section (2)
(iii) by claiming the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section, <u>determined in such manner as may be prescribed.</u>	Full prescription is still awaited. Changes made regarding depreciation are discussed in this write-up.
³ [<i>Explanation.</i> —For the purposes of clause (b), the “business of manufacture or production of any article or thing” shall include the business of generation of electricity.]	the business of generation of electricity is included. So distribution of electricity generated shall also be included. However, mere distribution of electricity will not be included.
(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for any subsequent year.	Deemed allowance of losses and consequent lapsed losses on account of specified elements of loss and depreciation.
(4) <u>If any difficulty arises regarding fulfilment of the conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (2) or clause (b) of said sub-section, as the case may be, 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.</u>	Difficulties due to use of old plant and machinery should also be removed. So that old plant and machinery can also be deployed for production and manufacture. Many times use of old plant and machinery is found economically viable when there is large gap in prices of old and new plant and machinery.
(5) Every guideline issued by the Board under sub-section (4) <u>shall be laid before each House of Parliament, and shall be binding on the person, and</u>	

the income-tax authorities subordinate to it.	
<p>(6) Where it appears to the Assessing Officer that, <u>owing to the close connection</u> between the person to which this section applies and any other person, or for any other reason, <u>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</u>, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, <u>take the amount of profits as may be reasonably deemed to have been derived therefrom:</u></p> <p>Provided that <u>in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F:</u></p>	
<p>Provided further that the amount, <u>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.</u></p>	
<p>(7) Nothing contained in this section shall apply <u>unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:</u></p>	Exercise of option by filing form no. 10-ID u/r 21AF
<p>Provided that once the option has been exercised for any previous year, <u>it cannot be subsequently withdrawn for the same or any other previous year.</u></p>	<p>Option cannot be withdrawn.</p> <p>If one want to withdraw, then by not complying with conditions and becoming ineligible, can possibly switch to S.115BAA , if conditions applicable in that section are complied with otherwise can switch to normal provisions.</p>
Explanation.- <u>For the purposes of section 115BAA and</u>	The said meaning is reproduced

<u>this section, the expression "unabsorbed depreciation" shall have the meaning assigned to it in clause (b) of sub-section (7) of section 72A.]</u>	later on in this article.
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NOTES:-

1. Inserted vide Taxation Laws (Amendment) Act, 2019 w.e.f. 01-04-2020

2. Substituted vide Finance Act, 2020 dated 27-03-2020 w.e.f. 01-04-2021 before it was read as

"Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" other than the provisions of section 80JJAA"

3. Inserted vide Fiance Act, 2020 dated 27-03-2020 w.e.f. 01-04-2020

Benefits which will be denied are:

- (ii) without any deduction under the provisions of section 10AA relating to [Special provisions in respect of newly established Units in Special Economic Zones.](#) clause (iia) of sub-section (1) of section 32 relating to initial depreciation.

section 32AD relating to investment in new plant and machinery in notified backward area in certain states.

section 33AB relating to tea,coffee and rubber development accounts.

section 33ABA relating to site restoration fund.

Some clauses of S. 35 relating to scientific research namely

Clause (i) sub-clause (ii) relating to weighted deduction for contribution to scientific research association

or sub-clause (iia) paid to company for scientific research ,

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or sub-section (2AA) relating to payments made to National Laboratory , university or institute of technology etc.

or subsection (2AB) of section 35 relating to scientific research by a company engaged in specified businesses.

section 35AD option exercised relating to specified business.

section 35CCC expenditure on agricultural extension project.

section 35CCD expenditure on skill development projects

and

under any provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" other than the provisions of section 80JJAA and 80M;

Therefore, for decision making it is required to ascertain inter alia:

How much loss relating to special or incentive deductions was allowed in past which remained un-allowed and forms part of brought forwarded loss in the year in which one opts to avail this section?

S.80JJAA relating to weighted deduction for wages and salary paid to additional / new employees and deduction u/s 80M newly reinserted will continue.

"unabsorbed depreciation" shall have the meaning assigned to it in clause (b) of sub-section (7) of section 72A.] the said meaning reads as follows:

[(b) "unabsorbed depreciation" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the reorganisation of business or conversion or amalgamation or demerger had not taken place;]

Domestic company -an interesting issue for brain storming:

Meaning of domestic company highlighted for relevant portion:

From provision with highlights added	Remarks
2. In this Act, unless the context otherwise requires,-	Contextual phrase is used but there is a definite meaning provided
[(22A) "domestic company" means <u>an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income ;]</u>	Questions for brain storming are: What are the prescribed arrangements for the declaration and payment, within India, of the dividends? As per general understanding recommendation of dividend by board of directors and arrangement for payment to shareholders are arrangements for the purpose of this meaning

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Analysis of S.115BAA- tax @ 22% optional for companies OPTION IS SUBJECT TO SO MANY CONDITIONS AND CONNTIGENCIES lot of care and considerations are required.

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Therefore, provisions of Chapter XII (subject to some exceptions) will apply and other provisions of the Act will not apply, if inconsistent with provisions of this section as per one view and will not apply, as per another possible view.

The provisions seems very confusing, involving many contingencies in near future and in long-term. Also contingencies due to past assessments and disputes.

Furthermore, every year there are changes in provisions and new incentives may be introduced. Therefore, decision to opt for any of new provision should be after very careful examination of facts and circumstances, disputes in earlier years and expectation in medium to long-term about plans of company.

It is also not clear about how the income will be computed so far allowable deductions are concerned. In computation related provisions only what will not be allowed is provided and for depreciation new prescription will apply. The changes noticed are discussed later on in this write-up.

The second provision in this category of new provisions being provision of S.115BAA are reproduced below, in left column of table, with highlights added for easy analysis and in right column short remarks and observations are provided and some more discussions are made below the table on important aspects :

Section 115BAA

From provisions with highlights added	Observations / remarks
¹ [Tax on income of certain domestic companies.	Meaning of 'domestic company' is important. See note for brain storming given in last.
115BAA. (1) <u>Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent., if the conditions contained in sub-section (2) are satisfied:</u>	First assessment year can be AY 2020-21 It is optional. Rate of tax will be 22%.
Provided that where the person <u>fails to satisfy the conditions</u> contained in sub-section (2) in any previous year, the <u>option shall become invalid</u> in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, <u>as if the option had not been exercised</u> for the assessment year relevant to that previous year and subsequent assessment years.	Compliance of conditions is must, failure will deny benefit from year of failure on wards.
(2) For the purposes of sub-section (1), the total income of the company shall be computed,-	
(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or	Major incentives which are available cannot be claimed on exercise of option. Exception is about deduction for additional/

section 35CCC or section 35CCD or under any provisions of ² [Chapter VI-A other than the provisions of section 80JJAA or section 80M];	new employment as per S. 80JJAA and 80M which may not be significant. Incentives are briefly discussed later on.
(ii) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);	Loss brought forwarded or the element of loss relating to such incentives will not be set off. In fact as per other provisions these are considered as allowed hence lapsed.
(iii) without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i); and	Deemed loss or depreciation brought forwarded will also not be set off.
(iv) by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.	New rates and manner of depreciation may be provided.
(3) The loss and depreciation referred to in clause (ii) and clause (iii) of sub-section (2) 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:	Initial depreciation and loss of period prior to option year will be deemed to have been allowed.
Provided that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2020, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2019 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020.	WDV b/f to be revised / increased for any normal unabsorbed and unallowed depreciation till AY 2019-20.
(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction	S.80LA benefits will continue subject to relevant conditions.

under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.	
Explanation.-For the purposes of this sub-section, the term "Unit" shall have the same meaning as assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).	
(5) Nothing contained in this section shall apply unless the <u>option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:</u>	From 10-IC U/ R 21AE
Provided that in case of a person, where the option exercised by it under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, such person may exercise option under this section:	A company which opted for S.115BAB, as new manufacturing company opting to avail 15% tax which fails to satisfy conditions of that section can opt for this section that is S.115BAA to avail 22% rate of tax.
<u>Provided further that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.]</u>	No withdrawal of option will be permitted.

NOTES:-

1. Inserted vide [Taxation Laws \(Amendment\) Act, 2019](#) w.e.f. 01-04-2020
2. Substituted vide [Finance Act, 2020 dated 27-03-2020](#) w.e.f. 01-04-2021 before it was read as

"Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" other than the provisions of section 80JJAA"

Benefits which will be denied on opting S. 115BAA are:

- (iii) without any deduction under the provisions of section 10AA relating to [Special provisions in respect of newly established Units in Special Economic Zones.](#) clause (iia) of sub-section (1) of section 32 relating to initial depreciation.

section 32AD relating to investment in new plant and machinery in notified backward area in certain states.

section 33AB relating to tea, coffee and rubber development accounts.

section 33ABA relating to site restoration fund.

Some clauses of S. 35 relating to scientific research namely

Clause (i) sub-clause (ii) relating to weighted deduction for contribution to scientific research association

or sub-clause (iia) paid to company for scientific research ,

or sub-clause (iii) – payment to research association

or sub-section (2AA) relating to payments made to National Laboratory , university or institute of technology etc.

or subsection (2AB) of section 35 relating to scientific research by a company engaged in specified businesses.

section 35AD option exercised relating to specified business.

section 35CCC expenditure on agricultural extension project.

section 35CCD expenditure on skill development projects

and

under any provisions of Chapter VI-A under the heading “C.-Deductions in respect of certain incomes” other than the provisions of section 80JJAA;

S.80JJAA relating to weighted deduction for wages and salary paid to additional / new employees will continue.

Deduction u.s. 80M , newly reinserted will continue w.e.f. 01.04.2021

Decision making:

Therefore, for decision making it is required to ascertain inter alia:

How much loss relating to special or incentive deductions was allowed in past which remained un-allowed and forms part of brought forwarded loss in the year in which one opts to avail this section?

What are chances of availing incentives?

Whether restrictions can be complied with.

Changes relating to depreciation vide **NOTIFICATION NO. 82/2020 dated 1st October, 2020** :

Rate of depreciation on any block of assets which are more than 40% shall be restricted to 40% on exercise of option for lower rate of tax..

WDV b/f shall be increased by the amount of lapsed initial depreciation forming part of b/f depreciation.

As per provisions of S. 115BAB vide explanation meaning of unabsorbed depreciation shall be as follows:

"unabsorbed depreciation" shall have the meaning assigned to it in clause (b) of sub-section (7) of section 72A.] the said meaning reads as follows:

[(b) "unabsorbed depreciation" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the reorganisation of business or conversion or amalgamation or demerger had not taken place;]]

Domestic company -an interesting issue for brain storming:

Meaning of domestic company highlighted for relevant portion:

From provision with highlights added	Remarks
2. In this Act, unless the context otherwise requires,-	Contextual phrase is used but there is a definite meaning provided
<u>[(22A) "domestic company" means an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income ;]</u>	Questions for brain storming are: What are the prescribed arrangements for the declaration and payment, within India, of the dividends? As per general understanding recommendation of dividend by board of directors and arrangement for payment to shareholders are arrangements for the purpose of this meaning and any other purpose.

Similar wordings or wordings on similar lines are also used in annual finance Acts which prescribed rate of tax for domestic company.

Can it be said that a company who has not declared and / or made arrangements for payment of dividends is not a domestic company?

And therefore, whether such company is not liable to pay tax?