ANALYSIS OF SEC 115BAC

Individuals and HUFs can pay tax as per new tax regime of Section 115BAC

Currently, the Individuals and HUF are taxed as per the slab rates and the highest slab rate is 30% which applies when income exceeds Rs. 10,00,000. The Finance Bill, 2020, has provided an option to Individuals and HUF for payment of taxes at the following reduced rates:

Total Income (Rs)	Rate (%)
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

The option to pay tax at lower rates shall be available only if the total income of assessee is computed without claiming following exemptions or deductions:

(I) Applicable for persons in Employment:

(a) Leave Travel concession [Section 10(5)];
(b) House Rent Allowance [Section 10(13A)];
(c) Official and personal allowances (other than those as may be prescribed) [Section 10(14)];
(d) Standard Deduction [Section 16(ia)];
(e) Entertainment Allowance [Section 16((ii)];
(f) Professional Tax [Section 16(iii)];

(II) **Interest on housing loan [Section 24(b)]-**

In the case of personal taxpayers who have self occupied the property for own residence or who cannot occupy the property owing to employment, business or profession carried on at any other place he has to reside at that other place in a building not belonging to him, the annual value of the property shall be taken to be `nil'. However, interest on moneys borrowed is deductible up to a maximum of Rs.2 lakhs. This deduction cannot be claimed when the taxpayer opts for section 115BAC.

(III) **Deduction under Part C of Chapter VI-A** other than section 80JJAA, 80CCD (2) and 80LA cannot be claimed against the income of the taxpayer, when the taxpayer opts for section 115BAC.

(g) **Allowances to MPs/MLAs [Section 10(17)]-** In the case of persons being Member of Parliament or any State Legislature or of any committee thereof any income by way of daily allowance or any allowance shall not be eligible for exemption when such person opts for section 115BAC.

(h) **Allowances for income of minor [Section 10(32)]: -** In case, the income of minor is clubbed with the income of the parent under section 64(1A), a sum of Rs.1500 is deducted by virtue of section 10(32). This deduction cannot be claimed by the parent who opts for section 115BAC.

(i) **Deduction for units established in Special Economic Zones (SEZ) [Section 10AA]-** In the case of newly established undertaking in free trade zone, deduction is bestowed under section 10AA. In the case of personal taxpayer who opts for section 115BAC, this benefit of deduction under section 10AA has to be foregone.

(j) **Additional depreciation in respect of new plant and machinery [Section 32(1) (iia)]-** Additional depreciation in the case of persons engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power is deductible at 20% of the actual cost of machinery or plant. This is in addition to the depreciation allowable under section 32(1)(ii). This additional depreciation has to be foregone by a taxpayer who opts for section 115BAC.

(k) **Deduction for investment in new plant and machinery in notified backward areas [Section 32AD]-** Section 32AD provides for accelerated depreciation at 15% of the actual cost of new asset being plant or machinery when the undertaking or enterprise is engaged in manufacture or production of any article or thing in a notified backward area in the States of Andhra Pradesh, Bihar, Telangana or West Bengal. This deduction of accelerated depreciation cannot be claimed when the assessee opts for section 115BAC.

(l) **Deduction in respect of tea, coffee or rubber business [Section 33AB]-** Section 33AB provides for deduction equal to the amount of deposit or 40% of the profits of the business whichever is less of the person carrying on the business of growing and manufacturing tea or coffee or rubber in India. This deduction is also to be foregone by the taxpayers when opts for section 115BAC.

(m) **Deduction in respect of business consisting of prospecting or extraction or production of petroleum or natural gas in India [Section 33ABA]-**

Section 33ABA providing deduction for site restoration fund equal to the amount deposited or 20% of the profits of the business whichever is less of the person carrying on the business consisting of prospecting for or extraction or production of petroleum or natural gas or both in India. This deduction will not be available when the assessee opts for section 115BAC dealing with concessional rate of tax.

(n) Deduction for donation made to approved scientific research association, university college or other institutes for doing scientific research which may or may not be related to business [Section 35(1)(ii)];

(o) Deduction for payment made to an Indian company for doing scientific research which may or may not be related to business [Section 35(1) (iia)];

(p) Deduction for donation made to university, college, or other institution for doing research in social science or statistical research [Section 35(1)(iii)];

(q) **Deduction for donation made for expenditure on scientific research [Section 35(2AA)]-** Donations to National Laboratory or a University or an IIT deductible under section 35(2AA) cannot be claimed when the taxpayer opts for section 115BAC

(r) **Deduction in respect of capital expenditure incurred in respect of certain specified businesses, i.e., cold chain facility, warehousing facility, etc. [Section 35AD]-** In the case of certain specified businesses listed in section 35AD the entire amount of expenditure incurred towards plant and machinery is deductible. Such claim cannot be made when the assessee opts for section 115BAC.

(s) **Deduction for expenditure on agriculture extension project [Section 35CCC]-** Deduction under section 35CCC relating to agricultural extension project is allowable @ 150% of the expenditure incurred. This cannot be claimed when the assessee opts for section 115BAC

(t) **Deduction for family Pension [Section 57(iia)]-** In the case of person claiming deduction under section 57(iia) i.e. 1/3rd of such income or Rs.15,000 against family pension cannot be claimed when the assessee opts for section 115BAC.

OTHER CONDITIONS

Carry forward and set off benefits:

- Depreciation brought forward from any earlier assessment year cannot be set off.
- Loss under the head "Income from house property" cannot be set off against any other head of income. Further, it is not eligible for carry forward and set off in any subsequent assessment year.
- Depreciation can be claimed under section 32. However, additional depreciation dealt with section 32(1) (iia) cannot be claimed. The depreciation of current year shall be deemed to have been given full effect. Therefore, it is not eligible for carry forward and set off in any subsequent assessment year.
- No exemption or deduction for allowance or perquisite by whatever name called could be claimed against the income.
- Where the depreciation is not fully claimed for the assessment year preceding the assessment year 2021-22 then it shall be adjusted against the written down value of the block of assets as on 01.04.2020 in the prescribed manner, if the assessee has opted for section 115BAC for the assessment year 2021-22.
- The provisions of section 115BAC will not apply unless the assessee has opted for the same. The time limit for claiming the option are:
    - In the case of person having business income, on or before the due date specified in section 139(1) for furnishing the return of income for any previous year relevant to the assessment year commencing on or after 01.04.2021 and such option once exercised shall apply to subsequent assessment years also.
    - In the case of persons not having business income, the option could be furnished along with the return of income furnished under section 139(1) for a previous year relevant to the assessment year.

Lock in period:

- Where the assessee having income from business exercising the option for any previous year, he can withdraw only once for a previous year other than the previous year in which it was exercised. Thereafter, the person shall never be eligible to exercise the option under this section except where he ceases to have business income in which case, he can intimate the option along with the return of income.
- In the case of persons not having income from business, the option could be exercised every year and there is no lock in period.

Non-applicability of the provisions of Alternate Minimum Tax

- If an assessee, after opting for Section 115BAC, claims any of prescribed deduction or allowance in any previous year, then the option to pay tax at concessional rate shall become invalid for that year.

- The assessee opting for this scheme have been kept out of the purview of Alternate Minimum Tax (AMT). Further the provision relating to the computation, carry forward and set off of AMT credit shall not apply to these assessees.

Other Proposals applicable for persons in Employment

As many allowances have been provided through notification of rules, it is proposed to carry out amendment of the Income-tax Rules, 1962 (the Rules) subsequently, so as to allow only following allowances notified under section 10(14) of the Act to the Individual or HUF exercising option under the proposed section:

(a) **Transport Allowance** granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty
(b) **Conveyance Allowance** granted to meet the expenditure on conveyance in performance of duties of an office;
(c) **Any Allowance** granted **to meet the cost of travel** on tour or on transfer;
(d) **Daily Allowance** to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.

It is also proposed to amend rule 3 of the Rules subsequently, so as to remove exemption in respect of free food and beverage through vouchers provided to the employee, being the person exercising option under the proposed section, by the employer.

Applicability

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.