

## Special Provisions Relating to Certain Limited Liability Partnerships



The Finance Act, 2011 inserts a new Chapter XII-BA consisting of Section 115JC to 115JF, w.e.f 1-4-2012, i.e., A.Y: 2012-2013 for levying a special tax, viz., AMT or Alternate Minimum Tax @ 18.5% of the Adjusted Total Income, if tax payable in case of Limited Liability Partnerships [LLP] as computed under the provisions of the Act (excluding such 115JC) is less than 18.5% of Adjusted Total Income. Read on to know more...

### Special Provisions for Payment of Tax by Certain Limited Liability Partnerships [Section 115JC]

(1) Notwithstanding anything contained in this Act, where the regular income-tax payable for a previous year by a limited liability partnership is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of the limited liability partnership for such previous year and it shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

#### ■ Comments

(A) **Limited Liability Partnership:** As per Section 115JF(c): "limited liability partnership" has the same meaning as assigned to it in Section 2(1)(n) of the Limited Liability Partnership Act, 2008, i.e., a partnership formed and registered under this Act. Accordingly, AMT would be applicable only in case of LLP formed and registered in India. In other



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words, AMT would not apply to a foreign LLP as per Section 2 (m) of LLP Act, 2008, i.e., LLP formed, incorporated or registered outside India, which establishes a place of business within India.

**(B) Regular Income Tax:** As per Section 115JF (d): “Regular Income-Tax” means

- the income-tax payable
- for a previous year
- by LLP
- on its total income (or Regular total income)
- in accordance with the provisions of this Act (other than the provisions of this Chapter).

**(C) Regular Total Income:** It is computed as under:

- Computation of income under respective heads;
- Set-off losses, if any, under the said head (inter-head/intra-head) and determine carry forward of loss, if any, under respective head;
- Reduce deduction, in any, under Section 10AA, from the profit of the qualifying business; and
- Reduce deduction, if any, under Chapter VI-A including “Part C” thereof ;

**(D) Income-Tax Payable:** On Regular total income, tax chargeable to LLP at applicable rate [30%] would constitute income-tax payable, without any deductions for the payments made (self – assessment or advance tax or TDS) or any credits available.

### Example

Regular income-tax payable by LLP is ₹ 100,000. It has paid advance tax, say, of Rs.60,000; T.D.S. is ₹ 20,000; credits available (of AMT and/or Foreign Tax Credit) are ₹ 10,000.

Here, Regular income-tax payable is ₹ 1,00,000 and not amount of tax payable on self assessment, i.e., ₹ 10,000 [1,00,000 – (60,000 + 20,000 + 10,000)].

**(E) Alternate Minimum Tax or “AMT”:** As per Section 115JF (b): “Alternate Minimum Tax” means:

- the tax computed @ 18.5%;
- on adjusted total income ;

(2) *Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by—*

- (i) *deductions claimed, if any, under any section included in Chapter VI-A under the heading “C.—Deductions in respect of certain incomes”; and*
- (ii) *deduction claimed, if any, under Section 10AA.*

### ■ Comments

**(A) Adjusted Total Income:** As per Section 115JC (2), Adjusted Total Income is computed after increasing “Regular total income” by:

- (i) deductions claimed, if any, under Chapter VI-A – “Part C.—Deductions in respect of certain incomes”
- (ii) deduction claimed, if any, under Section 10AA

### Example

For A.Y.: 2012-2013, Regular total income of LLP is ₹ 1,00,000. In computing regular income, apart from claiming various allowances permitted and setting of the unabsorbed losses, etc., it has deducted an amount of ₹ 5,00,000 by way of deduction under Section 10AA of the Act.

- Adjusted total income = 1,00,000 + 5,00,000 = ₹ 6,00,000

### **(B) Computation of Adjusted Total Income and Related Aspects:**

**(1) *Malayala Manorama Co. Ltd. Vs. CIT [2008] 169 Taxman 471 (SC)***

The Assessing Officer has only limited power to examine whether books of account have been certified by authorities under the Companies Act, as having been properly maintained in accordance with said Act. Thereafter, he does not have jurisdiction to go behind net profit shown in profit and loss account except to extent provided in Explanation to Section 115JB.

Akin to Section 115JB, in computing the Adjusted Total Income, Regular Total Income should not be increased by other deductions (not being deduction, if any, under Section 10AA or Part C), e.g., exemption under Section 10(34) – dividend income or under Section 10(38)(long term capital gains).

The other deduction(s), if any, may impact determination of deduction under Section 10AA or Part C, e.g., remuneration to a partner may impact deduction under Section 10AA or Part C. However, it will not affect computation of Adjusted Total Income as starting point for its computation is Regular Total Income.

- (2)** The additions in respect of the deduction, in any, under Section 10AA or Part C are confined or restricted to the amount ‘claimed’ in computing Regular total income. In the context of Section 115JC (2), claimed would mean actually taken into account in computation of Regular total income to determine regular income-tax payable. Thus, the actual amount of the deduction considered for computing regular total income needs to be deducted.

### Example

Regular total income of LLP is nil. Its gross total income is ₹ 2,00,000 (after setting-off losses, etc.). It is eligible to the deduction under Part C of ₹ 5,00,000. However,

only ₹2,00,000 is claimed, as it can be claimed only to the extent of gross total income.

In this case, to determine Adjusted Total Income, Regular total income should be increased by ₹2,00,000, i.e., the amount claimed and not ₹5,00,000, being the amount eligible for deduction.

- Similarly, if during the course of scrutiny assessment, if the deduction under 'Part C', as claimed by LLP is reduced, then, the amount actually allowed in computing regular total income in the assessment order (not the amount claimed in the return) should be considered.

**(C) Deductions under "Part C" of Chapter – VIA:** For the A.Y.: 2012-2013, the following deductions are available to LLP under "Part C" Of Chapter – VIA:

Section	
<b>80-IA</b>	Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.
<b>80-IAB</b>	Deductions in respect of profits and gains by an undertaking or enterprise engaged in development of special economic zone
<b>80-IB</b>	Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertaking
<b>80-IC</b>	Deduction in respect of certain undertakings in Himachal Pradesh, Sikkim, Uttaranchal and north eastern states
<b>80-ID</b>	Deduction in the case of hotels and convention centers in NCR
<b>80-IE</b>	Deduction in respect of certain undertakings in north eastern states
<b>80JJA</b>	Deduction in respect of profit and gains from business of collecting and processing of bio-degradable waste
<b>80LA</b>	Deductions in respect of certain incomes of offshore banking units and international financial services centre

**(3) Every limited liability partnership to which this Section applies shall obtain a report, in such form as may be prescribed, from an accountant certifying that the adjusted total income and the alternate minimum tax have been computed in accordance**

*with the provisions of this Chapter and furnish such report on or before the due date of filing of return under Section 139 (1).*

#### ■ Comments

Section 115JC (3) obliges LLP to obtain a REPORT in the prescribed form from an "accountant", as per Section 115JF (a), i.e., having the same meaning as in the explanation below Section 288 (2).

Such REPORT should certify that Adjusted Total Income has been computed in accordance with Section 115JC (2) and AMT has been computed in accordance with Section 115JC.

Such REPORT has to be furnished on or before the due date of filing return of income under Section 139(1).

#### Tax Credit for Alternate Minimum Tax [ Section 115JD]

(1) *The credit for tax paid by a limited liability partnership under Section 115JC shall be allowed to it in accordance with the provisions of this Section.*

- Credit available under Section 115JD(1) is based on AMT paid by LLP under Section 115JC.

(2) *The tax credit of an assessment year to be allowed under sub-section (1) shall be the excess of alternate minimum tax paid over the regular income-tax payable of that year.*

- Amount of credit as per Section 115JD(2) would be the excess of AMT over Regular Income-tax on its Regular total income.

(3) *No interest shall be payable on tax credit allowed under sub-section (1).*

- On such credit, no interest is allowable.

(4) *The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (5) and (6) but such carry forward shall not be allowed beyond the tenth assessment year immediately succeeding the assessment year for which tax credit becomes allowable under sub-section (1).*

- Excess credit determined under Section 115JD(2) shall be carried forward for set-off in 10 succeeding assessment years from the assessment year in which tax credit becomes allowable.

(5) *In any assessment year in which the regular income-tax exceeds the alternate minimum tax, the tax credit shall be allowed to be set-off to the extent of the excess of regular income-tax over the alternate minimum tax and the balance of the tax credit, if any, shall be carried forward.*

- The credit is allowed to be set-off in the year in which Regular Income-tax is payable. The credit allowable as set-off would be to the extent of

excess of Regular Income-tax over AMT and the balance would be carried forward.

- Further, the provision nowhere specifies that for carry forward and set-off any other condition has to be complied with, e.g., unlike loss, there is no provision for filing return in time or paying tax in time, etc.

(6) *If the amount of regular income-tax or the alternate minimum tax 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.*

- If there is a variation in the Regular Income-tax or AMT pursuant to any orders of the assessing authorities, then the tax credit shall also be varied. However, it does not list the provisions under which the order may be passed.
- Section 115JAA(6) of the Act, while dealing with variation in MAT credit, lists the order under various provisions of the Act. For the purpose of Section 115JD(6) orders passed under the Act, pursuant to which the variation may be made, could be:

Section	Order
143(3)	Scrutiny Assessment Order
153A to 153C	Assessment order in search cases
154	Order of rectification
155	Order of rectification
245D(4)	Final order passed by Settlement Commission
250	First Appellate Authority
254	Income-tax Appellate Tribunal
260	High Court
262	Supreme Court
263 or 264	CIT, pursuant to Revision Jurisdiction

**Example:** X LLP details are given infra:

Assessment Year 2012-2013	₹
Regular total income	1,000
Adjusted total income	5,000
AMT payable [5,000 x 18.5%]	925
Regular income-tax payable [1,000 x 30%]	300
Credit available under Section 115JD(1) is based on AMT paid by LLP under Section 115JC	925

Amount of credit as per Section 115JD(2) [ 925 – 300]	<b>625</b>
As per Section 115JD(4), the credit so available shall be carried forward up to 10 succeeding assessment years, i.e., A.Y.: 2012-13 + 10 = A.Y.: 2022-23	

Assessment Year 2013-2014	₹
Regular total income	1,000
Adjusted total income	1,100
Regular income-tax payable [1,000 x 30%]	300.00
AMT payable [1,100 x 18.5%]	203.50
Credit allowed to be set off under Section 115JD(5) [ 300.00 – 203.50]	<b>96.50</b>
Amount of Tax to be paid	203.50
X LLP shall carry forward the balance under Section 115JD(5) [ 625 – 96.50]	528.50

#### Notes:

#### (1) Tax credit, whether available with reference to all types of taxes?

Under Section 115JD(4), tax credit is to be set off in the credit year when tax is paid on Regular total income.

Under Section 115JD(5) as said above, the tax credit allowable for set-off is to be quantified with reference to tax on regular total income, and tax on adjusted total income.

As per the definition of total income, it would include all incomes irrespective of the fact that some items of income may suffer at specified rate, whether concessional or otherwise, in the Act or at a general rate specified by the Finance Act, from year to year.

In a given case, total income of LLP could include income by way of capital gains, which may suffer tax at specified rate in the Act or at a concessional rate under Section 112 (which prescribes tax rate on long term capital gains).

Thus, the computation of credit will be with reference to regular income tax including tax on capital gain.

#### (2) Whether credit can be considered for payment of advance tax?

Yes, as held by Supreme Court in *CIT Vs. Tulsyan NEC Ltd.* (2011) 196 Taxman 181 (in the context of Section 234B and 234C).

Section 234B and 234C were amended by the Finance Act, 2006 to provide that in determining



assessed tax, MAT credit under Section 115JAA shall be reduced. However, those Sections are not amended to provide for reduction of MAT credit under Section 115JD.

In spite of that, it appears, having regard to the decisions of Apex Court, AMT credit can be reduced for determining 'assessed tax', being such status is reserved only for the decisions of the Supreme Court which are binding on all courts in the country by virtue of Article 141 of the Constitution.

#### Application of Other Provisions of this Act [Section 115JE]

Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to a limited liability partnership referred to in this Chapter.

##### ■ Comments

All the provisions of the Act, which are not in conflict with the provisions of the Chapter, would apply, as stated broadly, *infra*:

- Collection, payment and recovery of tax.
- Assessment procedures.
- Interest, penalties, prosecution, etc.
- All other provisions of the Act, not related to computation of regular total income or income.

#### (A) Application of the Other Provisions of the Act, Consequences and Scope

In the scheme of the Chapter, LLP has to make two computations (of Regular total income and adjusted total income); show total income as per both computations in the return; and finally adopt either as a total income.

Accordingly, while complying with the provisions of the Act, LLP may have to comply with the provisions relating to both. While doing so it will have to comply with the necessary requirement stipulated in that behalf.

#### Example

If LLP is entitled to a deduction under Section 10AA, it

will have to file the necessary report of the Accountant as required by that provision. Further, if the net result of Regular total income is a loss, it will have to ensure that the return is filed in time.

In the course of scrutiny assessment, LLP will, not only have to provide information and details in connection with both the computations, but also substantiate its claims accordingly. In the assessment, there could be additions or adjustment in both the computations.

In a given case, it may also be possible that LLP may have paid AMT; but it is finally assessed on an amount as per computation of Regular total income. Accordingly, LLP may have to agitate in the appropriate proceedings, addition and adjustment in respect of both the computations because such a computation may have ultimate effect either in the same assessment year or in respect of carry forward of AMT credit.

**(A) Advance Tax:** The Supreme Court has recently settled the controversy about liability to pay advance tax in case of companies where MAT provisions applied and held that a company liable to MAT is obliged to pay advance tax – *Jt. CIT Vs. Rolta India Ltd. (2011) 330 ITR 470 (SC)*.

CBDT through its Circular No.13 of 2001, dated 9-11-2001, after analysing the provisions of Section 115JB and other provisions of the Act has taken a view that the companies liable to MAT are obliged to pay advance tax.

Section 2(9) of the Finance Act, 2011, *inter alia*, provides for the rates for payment of advance tax. First proviso thereof provides, *inter alia*, that the rate for payment of advance tax in case of applicability of Section 115JC shall be the rate specified in the Section

Having regard to the above, as well as the similarity of language of Section 115JE and 115JB(5) of the Act, LLP liable to AMT would be obliged to pay advance tax.

**(C) Surcharge and Education or Higher Secondary**

Education Cess: As per the provisions of Section 4 of the Act, the levy is subject to the rates which may be prescribed by the Finance Act every year. AMT rate is contained in Section 115JC itself.

Section 2(11) and 2(12) of the Finance Act, 2011, respectively, provide that the income tax calculated under sub-sections (1) to (10) shall be increased by the surcharge and by an additional surcharge, viz., Education Cess (2%) and Secondary and Higher Education Cess (1%).

LLP is not liable to surcharge.

Accordingly, for discharging the liability of AMT, LLP will have to also consider Education Cess & Secondary and Higher Education Cess. Accordingly, the effective rate of AMT would be 19.055%.

**Example**

XY & Co. is a Limited Liability Partnership. For the previous year 2011-12, income of the LLP is calculated as follows:

	As claimed in the return of income	As determined by the Assessing Officer
	₹	₹
Net profit as per P&L A/c	35,00,000	35,00,000
Add: Excess depreciation (i.e., excess of depreciation debited to P&L A/c over depreciation available under Section 32)	4,000	80,000
Add: Disallowance under Section 37(1) and 43B	20,000	1,70,000
<b>(Total)</b>	<b>35,24,000</b>	<b>37,50,000</b>
Deductions -		
Under Section 10AA	22,00,000	16,60,000
Under Section 10B	2,60,000	1,80,000
Business income under Section 28	10,64,000	19,10,000

Long-term capital gain (on transfer of Plot)	3,00,000	3,00,000
Long-term capital gain (on transfer of equity shares in stock exchange) : Rs.18,00,000/- under Section 10(38)	Exempt	Exempt
<b>Gross total income</b>	<b>13,64,000</b>	<b>22,10,000</b>
Less: Deductions		
Under Section 80G	20,000	16,000
Under Section 80-IB	8,50,000	2,34,000
<b>Net Income</b>	<b>4,94,000</b>	<b>19,60,000</b>

**Ans:**

**(1) Tax computation under normal provisions**

	₹
Tax on long term capital gain of ₹3,00,000/- @ 20%	60,000
Tax on remaining income of ₹16,60,000/- @ 30%	4,98,000
<b>Total</b>	<b>5,58,000</b>
Add: EC + SHEC	16,740
<b>Tax liability</b>	<b>5,74,740</b>

**(2) Tax computation of adjusted total income**

	₹
Net income	19,60,000
Add: Deduction claimed under Section 80-IB	8,50,000
Add: Deduction claimed under Section 10AA	22,00,000
<b>Adjusted total income</b>	<b>50,10,000</b>

**(3) Computation of Alternate Minimum Tax and Credit**

	₹
18.5% of adjusted total income	9,26,850
Add: EC + SHEC	27,805
Alternate Minimum Tax (rounded off)	9,54,660
<b>Alternate minimum tax credit (i.e., 9,54,660 - 5,74,740)</b>	<b>3,79,920</b>