



## MINIMUM ALTERNATE TAX

Albert Einstein once said that the hardest thing in the world to understand is income tax. The statement rings true as tax laws are quite complicated and requires a great deal of time and effort to understand them.

This article focuses on one of such complicated areas in tax which was introduced as a synonym to the phrase “Giving in one hand and taking it back in another”. This area of Tax is rightly called as Minimum Alternate Tax (MAT).

## OBJECTIVE OF MAT REGIME

The concept of MAT was introduced under the Income Tax Act, 1961 (‘the Act’) to tax “Zero Tax” companies, i.e., companies that make high book profits and declare substantial dividends to their shareholders but have no or in significant taxable income under the Income Tax Act because of the exemptions, deductions and incentives provided thereon in the form of a liberal rate of depreciation, sector and region specific exemptions, deductions etc. MAT is in consonance with a fundamental canon of taxation-all entities must be taxed in proportion to their ability to pay.

The current MAT regime under the Act is similar to the first such regime-the US Alternate Minimum Tax (AMT). As with the Indian law, the legislative intent for introducing this kind of taxation was to ensure that “no taxpayer with substantial economic income can avoid significant tax liability by using exclusions, deductions and credits”

## BACKGROUND

The levy of a minimum tax on companies was first introduced through section 80VVA by the Finance Act, 1983 w.e.f. AY 1984-85. The method adopted by this section was to place a ceiling on the aggregate quantum of incentives available under various provisions of the Act.

However, the unabsorbed incentives were allowed to be carried forward and set off against taxable income in future years. This section 80VVA was dropped from the statute book by the Finance Act, 1987 w.e.f AY 1988-89.

The concept of tax on book profits was introduced originally under section 115J by the Finance Act, 1987 with effect from AY 1988-89 and it was withdrawn with effect from A.Y.1991-92. Subsequently the concept was reintroduced with a few changes, imposing Minimum Alternate Tax (MAT) under section 115JA with effect from AY 1997-98 and had effect up to A.Y.2000-01.

If the taxable income of a company computed under the Act in respect of any previous year relevant to the assessment year is less than 30 % of its book profits computed under both the above sections viz., 115J & 115JA, the total income of such company, chargeable to tax for the relevant previous year shall be deemed to be an amount equal to 30 % of such book profits.

The current MAT regime viz., Section 115JB was introduced in Finance Act, 2000 w.e.f. 1.4.2001, whereby, a company shall be liable to pay higher of tax computed under Income Tax Act provisions and tax computed under Sec 115JB.

## APPLICABILITY

The Provisions of Chapter XIIB [i.e. Sec 115J/115JAA/115JB] are applicable only to the Companies and not to any other assessee like Individual, HUF, Partnership Firm, LLP, etc.

The Authority for Advance Rulings (AAR) has held that the provisions of section 115JA are applicable to foreign companies with reference to profits derived from operations in India

## MINIMUM ALTERNATE TAX U/S 115JB

Under the provisions of the Act, every company, domestic or foreign, is required to pay MAT. As per Section 115JB, where the income tax computed under the Act in respect of any previous year relevant to the assessing year, is less than 18.5 per cent of its book profits, such book profit shall be deemed to be the total income of an assessee and tax payable on such total income shall be 18.5 per cent of the same.

The term book profit has been defined in the Act itself.

“Book profit” - means the Net Profit as shown in the profit and loss account for the relevant previous year as determined by the provisions of Schedule III to the Companies Act, 2013, with certain adjustments as given in section 115JB of the Act.

## CONSTITUTIONAL VALIDITY

The provisions of section 115J were brought in the statute book in an effort to tax what is commonly known as “zero tax companies”. As per National Thermal Power Corporation Ltd vs Union of India (1991) 192 ITR 187 (Del), it was held that provisions of Section 115J will not violate Article 14 and 19 of the Indian Constitution. Certain important features and provisions of the current MAT regime are explained below.

### A. MAT Credit

MAT credit is a beneficial provision for companies based on principles equity. In a given assessing year, when a company pays tax under the MAT provisions as opposed to the general provisions of the Act, the excess of tax so paid over and above the tax payable under the general provisions of the Act, accrues as tax credit to the company.

Thus, MAT credit is the difference between the tax calculated under the provisions of MAT and the tax calculated under the general provisions of the Act (i.e., normal tax liability). Such credit is allowed to be carried forward and set-off against the income tax liability in an assessment year in which the company is liable to pay tax under the general provisions of the Act (and not under the MAT provisions), to the extent of such tax payable over and above the book profits in that assessment year. MAT credit can be carried forward and set-off for 10 assessment years immediately succeeding the assessment year in which the tax credit was first computed.

Assessment Year	Tax payable under General Provisions of ITA	Tax payable u/s 115JB	Tax payable by the Company (Before MAT credit set-off)	MAT credit	MAT Credit Set –off	Tax payable by the Company (after MAT credit set-off)	MAT credit carried forward
2010-11	100	120	120	20	-	120	20
2011-12	150	160	160	10	-	160	30 (20+10)
2012-13	200	190	200	-	10	190	20 (20+10)
2013-14	300	280	300	-	20	280	-

## B. Advance payment of Tax

Under the Income Tax Act, every assessee is required to pay advance tax on their income if advance tax liability as computed in accordance with the provisions of Chapter XVII of the Act, is INR.10,000/- or more during the financial year.

In *Jindal Thermal Power Company Limited vs. Deputy Commissioner of Income Tax*, the Karnataka High Court distinguished its own decision and held that Sec. 115JB is a self contained code regarding the MAT liability of Companies. Therefore, where such companies defaulted in payment of Advance Tax, they were liable for payment of interest u/s 234B & 234C of the Act. Also there is a CBDT Circular No. 13/2001 which was issued on 9-11-2001 clarifying that all companies are liable for payment of advance tax under the new MAT provisions of section 115JB of the Act.

## C. Report on MAT

Every company to which MAT is applicable is required to furnish a report in the prescribed Form 29B (As per Rule 40B of the IT Rules, 1962) from an accountant as defined in the Explanation to Sec. 288 of the Act, certifying that the book profits have been calculated in accordance with the provisions of MAT. This form has to be submitted along with the ROI filed u/s 139(1) or along with the ROI furnished in response to u/s 142 (1).

## D. Applicability of MAT to Units in SEZ

The provisions of Sec. 115JB initially did not apply to income from any business carried on in or any services rendered by a company in a Special Economic Zone. Sec. 115JB (6) was, however, amended by the Finance Act, 2011 and a proviso was added making the provisions of Sec.115JB applicable even to SEZ with effect from April 1, 2012.

## **Illustrative list of issues related to MAT**

### **1. Amount of Deferred Tax & Provision thereof**

Earlier deferred tax wasn't added back by the assesses while computing book profit on the plea that this isn't an Income Tax as mentioned in clause (a) in Explanation -1 . Clause (h) was inserted in the Explanation to remove this difficulty.

Now, if deferred tax or any provision on this account is debited in P&L a/c, then it has to be added back as per clause (h) of Explanation -1.

### **2. Provision for Doubtful Debts, Leave Encashment & Gratuity**

Majority of the A.O's were adding this item while computing book profits under Clause (c) of Explanation -1. Clause (c) refers to the amount set aside for liabilities, other than ascertained liabilities.

The Supreme Court in the case of CIT vs. HCL Comnet Systems & Services Ltd [2008] 205 ITR 409 has held that provision for doubtful debts isn't a liability. It is a provision made for likelihood of non recovery of money advanced by the assessee.

The Act has been amended & clause (i) has been inserted by Finance Act, 2009 w.r.e.f April 1, 2001. As per the clause, the amount or amounts set aside as provision for diminution in the value of any asset has to be added back to Net profits, if the amount is debited to P&L A/c.

The Apex court in its decision in Bharat Earth Movers Limited (BEMML) v. CIT (112 Taxman 61) held that liabilities pertaining to leave encashment and gratuity are ascertained liability and need not be added back under Clause (c) of Explanation 1 referred above.

### **3. Scope of the term "Income Tax"**

As per Clause (a), the amount of Income tax paid or payable and the provision thereof is to be added while computing Book profits, if the same is debited in P & L a/c. This includes Dividend Distribution Tax, surcharge, Education cess & SHEC. Companies that make provision for tax to be paid for foreign branches under tax laws of those countries should also be added back to the book profits as per AAR in Bank of India case.

### **4. Depreciation on account of revaluation of Fixed Assets**

The amount of depreciation is to be added back to net profits, if debited to P&L a/c as per the provisions of Clause (g) of Explanation 1. The depreciation on account of revaluation cannot be reduced while calculating the book profits.

As per the provisions of clause (iia) of Explanation 1, the amount of depreciation debited to P&L a/c (excluding the depreciation on account of revaluation of assets) is to be reduced from Net profits. The Net effect is that depreciation on account of revaluation is not to be reduced for computation of book profits.

### **5. Carry forward of unabsorbed business loss & depreciation loss**

Taxation on basis of MAT does not affect the carry forward & set off of business losses & unabsorbed depreciation under the normal provisions of the Act. Carry forward of Losses for the purpose of MAT & carry forward of losses for the purpose of normal provisions of the Act are two parallel streams & each stream is unaffected & untouched by the other stream.

Also, a question may arise as to whether brought forward business loss or depreciation to be taken is cumulative over the years or on a year to year basis. As explained in the Circular No 495 dated September 22, 1987, issued by the CBDT in the context of erstwhile section 115J of the Act, it may be said that the figure has to be taken cumulative over the years. The same exercise has to be done each year. This view was also upheld by the Madhya Pradesh High Court in CIT v Shree Synthetics Limited (233 ITR 333).

**6. Accounting for MAT Credit- As per Guidance note issued by Institute of Chartered Accountants of India (ICAI)**

The Finance Act, 1997 introduced section 115JAA (referred to as MAT Credit). Currently this credit can be carried forward for set-off for 10 succeeding years in accordance with the provisions of the Act. MAT credit can be set-off only in the year in which the company is liable to pay tax as per normal provisions of the Act.

**7. Presentation of MAT credit in the financial statements**

**Balance Sheet** – Where a company recognizes MAT credit as an asset, the same should be presented under the head ‘Loans & Advances’ since there being a convincing evidence of realization of asset. The asset may be reflected as ‘MAT Credit Entitlement’.

**Profit & Loss Account** – In the year in which the MAT credit becomes eligible to be recognized as an asset in accordance with the recommendations contained in the Guidance Note, the said asset should be created by way of credit to profit & loss account and presented as a separate line item.



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