

# **PROFESSIONAL PROGRAMME**

## **(NEW SYLLABUS)**

### **SUPPLEMENT**

#### **FOR**

#### **ADVANCED TAX LAW**

#### **(Part II - Direct Tax and International Tax)**

**(Relevant for Students appearing in June, 2020 Examination)**

#### **MODULE 1- PAPER 2**

*Disclaimer-*

*This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.*

**Students appearing in June, 2020 Examination shall note the following:**

- 1. For Direct taxes, Finance Act, 2019 is applicable.*
- 2. Applicable Assessment year is 2020-21 (Previous Year 2019-20).*
- 3. For Indirect Taxes: Goods and Services Tax 'GST' & Customs Law is applicable for Professional Programme (New Syllabus)*

*Students are also required to update themselves on all the relevant Rules, Notifications, Circulars, Clarifications, etc. issued by the CBDT , CBIC & Central Government, on or before six months prior to the date of the examination.*

The students who do not have the latest version of the study material may refer the latest study material available on the weblink:  
[https://www.icsi.edu/media/webmodules/Advance\\_Tax\\_Law\\_1\\_10\\_219.pdf](https://www.icsi.edu/media/webmodules/Advance_Tax_Law_1_10_219.pdf) for June, 2020 examination along with the supplements.

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**INCOME TAX ACT, 1961 & RULES 1962**

**CIRCULARS**

| <b>Sr. No.</b> | <b>Updates</b>  | <b>Lesson No.</b> |
|----------------|---|-------------------|
| 1.             | <p><b>Circular No. 14 dated 3th July 2019</b></p> <p><b>Clarification regarding taxability of income earned by a non-resident investor from off-shore investments routed through an Alternate Investment Fund</b></p> <p>The incidence of tax arising from off-shore investment made by a non-resident investor through the AIFs would depend on determination of status of income of non-resident investor as per provisions of section 5(2) of the Income-tax Act, 1961 (Act). As per section 5(2) of the Act, the income of a person who is non-resident, is liable to be taxed in India if it is <b>received or is deemed to be received in India</b> in such year by or on behalf of such person; or <b>accrues or arises or is deemed to accrue or arise to him in India</b>.</p> <p>Section 115UB of the Act ("Tax on income of investment fund and its unit holders) is the applicable provision to determine the income and tax-liability of investment funds &amp; their investors. In this context, investment fund "is defined to mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992). Thus, provisions of section 115UB apply only to Category I or Category II AIFs, as defined in SEBIs regulations.</p> <p>By an overriding effect over other provisions of the Act, sub-section (1) of section 115UB of the Act provides that any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund, shall be chargeable to income-tax in the same manner as If it were the income accruing or arising to, or received by, such person had the investments made by the investment fund been made directly by him and not through the AIF.</p> <p>The matter has been considered by the Board. As section 115UB (1) of the Act provides that the investments made by Category I or Category II AIFs are deemed to have been made by the investor directly, it is hereby clarified that</p> | Lesson<br>18      |

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|    | <p>any income in the hands of the non-resident investor from off-shore investments routed through the Category I or Category II AIF, being a deemed direct investment outside India by the non-resident investor, is not taxable in India under section 5(2) of the Act.</p> <p>It is further clarified that loss arising from the off-shore investment relating to non-resident investor, being an exempt 1055, shall not be allowed to be set-off or carried-forward and set off against the income of the Category I or Category II AIF .</p> <p><b>Further details:</b> <a href="https://www.incometaxindia.gov.in/communications/circular/circular_no_14_2019.pdf">https://www.incometaxindia.gov.in/communications/circular/circular_no_14_2019.pdf</a></p>   |              |
| 2. | <p><b>Circular No. 29 Dated: 2<sup>nd</sup> October, 2019</b></p> <p><b>Clarification in respect of option under section 115BAA of the income tax Act , 1961 inserted through The Taxation Laws (Amendment) Ordinance 2019</b></p> <p>Section 115BAA in the Income-tax Act, 1961 provides that a domestic company shall, at its option, pay tax at a lower rate of 22 percent for any previous year relevant to the Assessment Year beginning on or after 1<sup>st</sup> April 2020 subject to certain conditions including that the total income should be computed without claiming any deduction or exemption:</p> <p>The option is required to be exercised by the company before the due date of furnishing return of income and the option once exercised, cannot be subsequently withdraw and shall apply to all subsequent assessment.</p> <p>The Ordinance also amended section 115JB of the Act relating to Minimum Alternate Tax (MAT) so as at inter alia provide that the provisions of said section shall not apply to a person who has exercised the option referred to under newly inserted section 115BAA.</p> <p>Representations have been received from the stakeholders seeking clarification on following issues relating to exercise of option under section 115BAA:</p> <ul style="list-style-type: none"> <li>a) Allowability of brought forward loss on account of additional depreciation: and</li> <li>b) Allowability of brought forward MAT credit.</li> </ul> <p>These issues have been examined in the board and in order to provide clarity in the matter, the clarifications are issued as under:</p> <p>As regards allowability of brought forward loss on account of additional depreciation, it may be noted that clause (i) of sub-section (2) of the newly inserted section 115 BAA inter alia, provides that the total income shall be computed without claiming any deduction under clause (iia) of sub-section (1) of section 32 (additional depreciation): and clause (ii) of the said sub - section provide that the total income shall be computed without claiming set off of any loss carried forward from any earlier assessment year if the same is</p> | Lesson<br>18 |

attributable inter alia, to additional deprecation. Therefore, a domestic company which, would exercise option for availing benefit of lower tax rate under section 115BAA shall not be allowed to claim set off of any brought forward loss on account of additional depreciation for an Assessment Year for which the option has been exercised and for any subsequent Assessment Year. Further as there is no line line within which option under section 115BAA can be exercised, it may be noted that a domestic company having brought forward losses on account of additional depreciation may if it so desires, exercise the option after set off of the losses so accumulated.

As regards allowability of brought forward MAT credit, it may be noted that as the provisions of section 115JB relating to MAT itself shall not be applicable to the domestic company which exercises option under section 115BAA, it is hereby clarified that the tax credit of MAT paid by the domestic company exercising option under section 115BAA of the Act shall not be available consequent to exercising of such option.

Further, as there is no line line within which option under section 115BAA can be exercised, it may be noted that a domestic company having credit of MAT may, if it so desires, exercise the option after utilizing the said credit against the regular tax payable under the taxation regime existing prior to promulgation of the ordinance.

**Further details:** [https://www.incometaxindia.gov.in/communications/circular/circular\\_29\\_2019.pdf](https://www.incometaxindia.gov.in/communications/circular/circular_29_2019.pdf)

## INCOME TAX ACT, 1961 & RULES 1962

### NOTIFICATIONS

| Sr. No. | Updates  | Lesson No.     |
|---------|--|----------------|
| 1.      | <p><b>Notification No. 63/2019/Dated 12th September, 2019</b></p> <p>The Central Government vide this notification hereby notifies the Cost Inflation Index for the FY 2019-20 as “289”</p> <p>This notification shall come into force with effect from the 1st day of April, 2020 and shall accordingly apply to the Assessment Year 2020-2021 and subsequent years.</p> <p><b>Further details:</b> <a href="https://www.incometaxindia.gov.in/communications/notification/notification_63_2019.pdf">https://www.incometaxindia.gov.in/communications/notification/notification_63_2019.pdf</a></p> | Lesson 18 & 22 |
| 2.      | <p><b>Notification No. 64/2019 Dated 13th September, 2019</b></p> <p>The Central Government hereby notifies that where the variation between the arm’s length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been</p>  | Lesson 20      |

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|                  | <p>undertaken shall be deemed to be the arm's length price for assessment year 2019-2020.</p> <p><b>Explanation.-</b> For the purposes of this notification, “wholesale trading” means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-</p> <ul style="list-style-type: none"> <li>i purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities; and</li> <li>ii average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities.</li> </ul> <p>Explanatory Memorandum: It is certified that none will be adversely affected by the retrospective effect being given to the notification.</p> <p><b>Further details:</b> <a href="https://www.incometaxindia.gov.in/communications/notification/notification_64_2019.pdf">https://www.incometaxindia.gov.in/communications/notification/notification_64_2019.pdf</a></p>  |                                       |
| <p><b>3.</b></p> | <p><b>Notification No. 76 /2019/ Dated 30th September, 2019</b></p> <p><b>Amendment in Rule 10CB in respect of computation of interest pursuant to secondary adjustment u/s 92CE of the Income Tax Act, 1961</b></p> <p>The Central Board of Direct Taxes hereby Income-tax (11<sup>th</sup> Amendment) Rules, 2019 which shall come into force with effect from the date of the publication in the Official Gazette.</p> <p>In the Income-tax Rules, 1962, in rule 10CB</p> <p>(I) for the words “excess money” occurring at both the places, the words “excess money or part thereof” shall be substituted;</p> <p>(II) in sub-rule (1), —</p> <p>(A) for clause (iii), the following clause shall be substituted, namely: —</p> <p>“(iii) in a case where primary adjustment to transfer price is determined by an advance pricing agreement entered into by the assessee under section 92CC of the Act in respect of a previous year, -</p> <ul style="list-style-type: none"> <li>i from the date of filing of return under sub-section (1) of section 139 of the Act if the advance pricing agreement has been entered into on or before the due date of filing of return for the relevant previous year;</li> <li>ii from the end of the month in which the advance pricing agreement has been entered into if the said agreement has been entered into after the due date of filing of return for the relevant previous year”;</li> </ul> <p>(B) for clause (v), the following clause shall be substituted, namely: —</p> <p>“from the date of giving effect by the Assessing Officer under rule 44H to the resolution arrived at under mutual agreement procedure, where the primary adjustment to transfer price is determined by such resolution under a Double Taxation Avoidance Agreement entered into under</p> | <p><b>Lesson</b></p> <p><b>20</b></p> |

section 90 or section 90A of the Act”;

(III) after sub-rule (2), the following sub-rule shall be inserted, namely:—

“(3) The interest referred to in sub-rule (2) shall be chargeable on excess money or part thereof which is not repatriated—

- a) in cases referred to in clause (i), in sub-clause(a) of clause (iii) and clause (iv) of sub rule(1), from the due date of filing of return under sub-section (1) of section 139 of the Act;
- b) in cases referred to in clause(ii) of sub-rule(1), from the date of the order of Assessing Officer or the appellate authority, as the case may be;
- c) in cases referred to in sub-clause(b) of clause (iii) of sub-rule(1), from the end of the month in which the advance pricing agreement has been entered into by the assessee under section 92CC of the Act;
- d) in cases referred to in clause (v) of sub-rule (1), from the date of giving effect by the Assessing Officer under rule 44H to the resolution arrived at under mutual agreement procedure.”;

(IV) for the Explanation, the following Explanation shall be substituted, namely:

“Explanation- For the purposes of this rule, —

- A. “International transaction” shall have the same meaning as assigned to it in section 92B of the Act;
- B. The rate of exchange for the calculation of the value in rupees of the international transaction denominated in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the previous year in which such international transaction was undertaken and the “telegraphic transfer buying rate” shall have the same meaning as assigned in the Explanation to rule 26.”

**For Details:** [https://www.incometaxindia.gov.in/communications/notification/notification\\_76\\_2016.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_76_2016.pdf)