

Presentation on section 80IBA of Income Tax Act (amended) along with Alternate Minimum Tax

Deduction of 100% profits to Affordable Housing Projects

Where the gross total income of an assessee includes any profits and gains derived from the business of developing and building housing projects, there shall, subject to the provisions of this section, be allowed, a deduction of an amount equal to hundred per cent (100%) of the profits and gains derived from such business.

Conditions to be satisfied by such housing projects:

The housing project must satisfy the following conditions to claim benefit under this section.

1. Main Conditions:

Particulars	Metro	Non- Metro
Location	Chennai, Delhi, Kolkata or Mumbai or within the area of twenty-five kilometers (25 Kms) (removed w.e.f 1-4-2018) from the municipal limit of these cities.	Within the Jurisdiction any Municipality or Cantonment board
Minimum size of Project	Plot size of land should not be less than 1000 sq. mtrs.	Plot size of land should not be less than 2000 sq. mtrs.
Residential unit Size	Does not exceed 30 sq. mtrs. (322.91 Sq Feet)	Does not exceed 60 sq. mtrs. (645.83 Sq Feet)
Project Utilization of Floor area ratio	Not less than 90% permissible under rules made by Government or local authority	Not less than 80% permissible under rules made by Government or local authority

2. The project must be **approved** by competent authority after 01-06-2016 but on or **before 31-03-2019.**

- Where the approval in respect of a housing project is obtained more than once, the date of first approval should be taken as the date of approval of the project.

3. The project must be **completed within a period of three years** (replaced by **five years** w.e.f 01-04-2018) from the date of approval by the competent authority

- The project will be deemed to be completed where certificate of completion is obtained from competent authority in writing.

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4. The **shops and commercial built up area** (replaced by carpet area w.e.f 01-04-2018) **cannot exceed 3% of total built up area** (replaced by carpet area w.e.f 01-04-2018) of the project.

5. If an individual is allotted a residential unit in the project, no other unit should be allotted to the;

- same individual
- spouse of the individual
- minor children of such individual

6. Separate books to be maintained for such project.

Illustration:

Particulars	Project Eligible u/s 80-IBA	Other Project	Total Income
Gross Total Income	100.00	100.00	200.00
Less : Deduction u/s 80-IBA	100.00	0	100.00
Net Profit	0	0	100.00

7. If the project is **not completed within 3 years** from the date of approval, the profits which were allowed as deduction under this section shall be **deemed to profits** of the year in which such time limit of completion expires.

For Example, Project was approved on 01.07.2016 than the project should be completed on or before 30.06.2021. If not completed before 30.06.2021 than deduction claimed u/s 80-IBA was taxed in FY 2021-22.

8. Nothing contained in this section shall apply to any assessee who executes the housing project as a works-contract awarded by any person (including the Central Government or the State Government).

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Meaning of Other Terminology:

A. **“built-up area”** means the inner measurements of the residential unit at the floor level, including projections and balconies, as increased by the thickness of the walls, but does not include the common areas shared with other residential units, including any open terrace so shared;

B. **“competent authority”** means the authority empowered by the Central Government;

C. **“floor area ratio”** means the quotient obtained by dividing the total covered area of plinth area on all the floors by the area of the plot of land;

D. **“housing project”** means a project consisting predominantly of dwelling units with such other facilities and amenities as the competent authority may specify subject to the provisions of this section;

E. **“residential unit”** means an independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another’.

F. **“carpet area”** (As defined in clause(k) of section 2 of RERA,2016) means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or veranda area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation : For the purpose of this clause, the expression “exclusive balcony or veranda area” means the area of the balcony or veranda, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and “exclusive open terrace area” means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee

Note: Amendment by Budget is prospective not retrospective.

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FAQs

1. Project is completed within 5 years but Flats are sold after 10 years, will deduction be allowed?

Solution: – Yes, because there is limit on completion of project not on sale of flats of project, flats can be sold at anytime.

2. When 1 residential unit is allotted to an individual and can second be transferred to parents and major children?

Solution: – Yes, because condition is only for the individual himself/herself or the spouse or the minor children of such individual.

3. Where issue of Completion Certificate is delayed by Municipal Authority, Will deduction be allowed?

Solution: – Deduction U/s. 80IB(10) cannot be denied for mere delay in issue of completion certificate by Municipality.

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Alternate Minimum Tax – Section 115JC

(Provisions explained for LLP as an example)

Applicability :

It should have claimed deduction under

- chapter VI heading C (Deductions in respect of certain incomes except u/s 80P) or
- under section 10AA (Profit derived by SEZ Units) or
- Section 35AD (Deduction for expense on specified business)
- The relief of Adjusted Total Income exceeds Rs 20 Lakhs is not available to LLPs.

Rate of AMT:

Adjusted Total Income	Tax Rate
Upto Rs 1 crore.	19.055%
Exceeds Rs 1 crore.	21.3416%*

*with Surcharge : 12%

Computation Of Adjusted Total Income:

Total Income of the assessee under normal provisions of the Act	xxx
ADD:	
Deduction claimed under Chapter VI heading C (80 H to 80 RRB except u/s 80P)	Xxx
Deduction claimed under section 10AA	Xxx
Deduction claimed under section 35AD	Xxx
LESS:	
Depreciation allowed u/s 32 of the Act as if no deduction u/s 35 AD in respect of such assets was allowed.	(Xxx)
Adjusted Total Income	Xxx

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Credit & carry Forward:

AMT is payable if the normal tax liability is less than the AMT liability (AMT> Normal Tax).

If in any year AMT is payable then the difference between the Normal Tax Payable and AMT paid is allowed as AMT Credit and can be adjusted with normal tax liability in subsequent/ future year in which the normal income tax payable exceeds the AMT .

AMT Credit can be carried forward upto **10 years. (15 years w.e.f 01-04-2018)**

Report :

As per section 115JC of the [Income Tax Act, 1961](#), an assessee is liable to AMT should obtain a report in Form No- 29C prescribed under Rule 40BA from CA certifying the adjusted total income and the alternate minimum tax duly computed and furnish the report on or before the due date of filing the return u/s 139(1).

Note :

MAT Credit of Company is not allowed to be carried forward in the hands of LLP on conversion of Company into LLP.

Example:

A LLP in AY 20 18-19 having total income of Rs 40 lakhs and has claimed deduction under Chapter VI A heading C of Rs 30 lakhs.

Normal Tax Calculation:

Total Income :	40 lakhs
Less Deduction u/c VI A heading c:	30 lakhs
Taxable Income:	10 lakhs
Tax Payable @30.9%	3.09 lakhs

AMT Calculation:

Adjusted Total Income:

Taxable Income under normal Tax Provisions:	10 Lakhs
Add: Deduction u/c VI A heading c:	30 Lakhs
Adjusted Total Income:	40 Lakhs
AMT Payable @ 19.055%	7.622 Lakhs

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Since AMT payable is more than the Normal Tax Payable, the assessee will pay tax of Rs 7.62 lakhs. However, he will get tax credit of Rs 4.532 Lakhs (7.622-3.09) which can be carried forward and set off upto AY 2033-34.(i.e 15 years)

Now, suppose in next year the assessee has total income of Rs 50 lakhs and deduction u/c VI A heading C is Rs 5 lakhs, then:

Normal Tax Calculation:

Total Income :	50 Lakhs
Less Deduction u/c VI A heading c:	5 Lakhs
Taxable Income:	45 Lakhs
Tax Payable @30.9%	13.905 Lakhs

AMT Calculation:

Adjusted Total Income:

Taxable Income under normal Tax Provisions:	45 Lakhs
Add: Deduction u/c VI A heading c:	5 Lakhs
Adjusted Total Income:	50 Lakhs
AMT Payable @19.055%	9.5275 Lakhs.

Since, the Normal Tax Payable is more than the AMT payable, the assessee will pay the Normal tax of Rs 13.905 Lakhs. Also, the assessee will get AMT credit OF 4.3775 lakhs (13.905 - 9.5275) available to it out of Rs 4.532 Lakhs.