MAT to AMT

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Alternate Minimum Tax on LLPs

With the passage of Limited Liability Partnerships Act, Limited Liability Partnerships (LLP) has been thought of new form of business entity by various business houses and entrepreneurs. LLP an hybrid entity combines advantages of company and partnership firm. However on regulatory front, there is lack clarity on various issues like taxation, FDI, etc. governing LLP. Taxation of LLP is also evolving. Since the introduction of LLP every Finance Bill carries one or the other provision, directly or indirectly concerning taxation of LLP. Finance Bill, 2011 is no exception to it. Bill proposes to introduce Alternate Minimum Tax (AMT) on LLP. Income-tax Act levies such minimum tax on corporates. For the first time it seems that such minimum tax has been levied other than on company. LLP is considered as firm for the levy of income-tax. LLP being a firm, Minimum Alternate Tax & Dividend Distribution Tax is not applicable to LLP. In view of this Finance Minister, thought that there is erosion of tax base. In order to hoard erosion of tax base, AMT has been introduced on LLP.

Proposed clause 18 of the Finance Bill intends to introduce set of provisions under new Chapter XII-BA of the Act. Brief contents of each of the sections are as under:

S. 115JC

- Sub-section (1) starts with notwithstanding words
  - It intends to compare normal tax on LLP with AMT.
  - If normal tax is lower than AMT, adjusted total income shall be deemed to be total income of LLP.
  - Then adjusted total income would be subject to tax at 18 ½ per cent.
- Sub-section (2) lays the method of calculating adjusted total income
  - It is sum of (a) Total income (without considering provision of AMT) (b) income based deductions claimed under any section under Chapter VI-A Part C and (c) deduction claimed u/s 10AA i.e. units established in Special Economic Zones
- Sub-section (3) requires such LLPs to obtain report in prescribed form from accountant,
  - Accountant is required to certify computation of adjusted total income and AMT is as per the provisions of the Act.
  - Report is required to be obtained on or before due date of filing of return u/s 139(1).

S. 115JD

- Sub-section (1) allows grant of tax credit of taxes paid u/s 115JC.
- Sub-section (2) lays down the method of calculating tax credit.
  - o Tax credit is excess of AMT over normal income tax payable for that year.
- Sub-section (3) specifies that no interest would be allowed on such tax credit.
- Sub-section (4) restricts the carry forward of such credit up to 10 years from the end of assessment year in which tax credit was allowed.

- Sub-section (5) allows set off of AMT against normal tax liability in future assessment years.
  - o Set off is allowed in the assessment year in which normal tax on LLP exceeds AMT,
  - o Set off of Tax credit would be upto the amount of tax which is in excess of AMT,
  - o Balance of the tax credit which remains unabsorbed would be allowed to set off in subsequent years.
- Sub-section (6) allows adjustment to tax credit on account of increase/decrease of AMT as a result of any order passed under the Act.

S. 115JE

- Section 115JE states that all other provisions of the Act shall apply to such LLPs liable for AMT.

S. 115JF

- Section defines various terms used under this chapter. Some of them are as under:
  - o AMT means the amount of tax computed on adjusted total income at the rate of 18 ½%.
  - o Regular income-tax means the income-tax payable during previous by a LLP on its total income computed as per the provisions of Act (other than this chapter)

Provisions of this chapter are applicable from AY 2012-13.

Provisions of new chapter can be better understood with the help of following example:

PM LLP engaged in development of housing projects.

A) Computation of income under normal provision of Act

Particulars	Year 1	Year 2	Year 3
Gross Total income	1,000	1100	1400
Deduction u/s 80-IB(10)	700	500	400
Total income	300	600	1000
Tax @ 30%	90	180	300
E. Cess @ 3%	3	5	9
Total Tax	93	185	309

B) Computation of adjusted total income

Particulars	Year 1	Year 2	Year 3
Total Income	300	600	1000
Add: Deduction under Chapter VIA-C ie 80-IB(10) & 10AA	700	500	400
Adjusted total Income	1,000	1100	1400
Alternate Minimum Tax @ 18½ %	185	204	259
Education Cess @ 3%	6	6	8
Total	191	210	267

C) Computation of tax

Particulars	*Year 1*	*Year 2*	*Year 3*
Normal Tax (a)	90	180	300
Alternate Minimum Tax (b)	185	204	259
Higher of (a) or (b)	185	204	300
Tax Due (including Education Cess)	191	210	309
Less Tax credit utilised	NIL	NIL	41
Tax payable	191	210	268

D) Computation of tax credit

Particulars	*Year 1*	*Year 2*	*Year 3*
Total Tax credit available for utilisation	NIL	95	119
			(95+24)
Tax Credit utilised	NIL	NIL	41
(Normal tax – AMT) excluding Education Cess			(300-259)
Tax credit allowed to be carried forward	95	24	78
	(185-90)	(204-180)	(119-78)

Comments

- Provisions of this chapter are applicable only to the LLPs who are either SEZ units or such units claiming deductions in respect of certain income under Chapter VIA Part C. By and large these LLPs would be those who claim deductions u/s 10AA, 80IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE, 80JJA, 80LA, 80Q. In view of AMT, LLPs engaged in infrastructural projects or having units in SEZ would be liable to pay tax even though they are otherwise not liable to pay tax as per normal tax provisions. However LLP with huge capital intensive projects but not claiming deductions as specified above would not be affected. LLPs who are formed as a intermediary holding entities, earning passive income like capital gains, dividend (whether exempt or taxable) are also not affected by this proposed amendment.
- Computation of LLPs adjusted total Income is less complicated as compared to computation of company profit liable for MAT and probably would be less prone to litigation.
- In view of provisions of S. 115JB(7), conversion of private company or unlisted public company into LLP, unutilised MAT credit u/s 115JAA is lost. However post conversion such LLP may again be liable to AMT under new provisions, but still lost MAT credit is not revived.
- Education cess & higher secondary cess is not allowed to be carried forward u/s 115JD
- LLP would be liable to pay advance tax and upon failure to pay advance tax interest u/ss. 23B & 234C would be attracted.

Minimum Alternate Tax

MAT rate

Currently all the companies (except exempted companies) are required to pay MAT, if income-tax payable on income computed under normal provisions of Act is less than specified percentage on book profits computed u/s 115JB. Specified percentage has been increasing year by year. It was 7.5% in A.Y. 2007-08 and grown to 18% in A.Y. 2011-12. Finance Bill 2011 has marginally raised MAT rate from 18% to 18½% w.e.f. A.Y. 2012-13.

Withdrawal of exemption from applicable MAT

Special Economic Zone Act, 2006 has provided that MAT would not be applicable to income earned by

- Entrepreneur from the unit located in SEZ and
- Developer of SEZ from development of SEZ.

Above exemption is proposed to be withdrawn w.e.f. A.Y. 2012-13. Consequential amendment has also been proposed in SEZ Act.

Conclusion

LLP has been introduced as new alternative corporate structure which provides flexibility of organising internal structure. Every year tinkering tax provisions and not providing clarity on other regulatory policies would only create chaos and ambiguity. It would ultimately frustrate the larger objective of the Government in establishing preferred alternative business vehicles.