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## **Section 80-IBA Affordable Housing Scheme: Amendments, FAQs, Relevant Case Laws and Updated with Finance Act 2017** (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html>)

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**IN 80** (<https://taxguru.in/income-tax/section-80iba-conditions-relaxed-promote-affordable-housing.html>). (**AFFORDABLE HOUSING SCHEME**)

### **AMENDMENTS AND FAQ WITH RELEVANT CASE LAWS**

#### **(UPDATED WITH FINANCE ACT 2017)**

- in respect of profits and gains from housing projects.—(1) Where the gross total income of an assessee included from the business of developing and building housing projects, there shall, subject to the provisions of section 80-IBA, be allowed a deduction of an amount equal to hundred per cent (100%) of the profits and gains derived from such business.
- For the purposes of sub-section (1), a housing project shall be a project which fulfils the following conditions, namely:—
- (a) the project is approved by the competent authority after the 1st day of June, 2016, but on or before the 31st day of March 2017 and the project is completed within a period of FIVE (5) years from the date of approval by the competent authority:
- it,—
- (i) where the approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing project was first approved by the competent authority; and
- (ii) the project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority;
- (c) the CARPET AREA of the shops and other commercial establishments included in the housing project does not exceed three per cent (3%) of the aggregate CARPET AREA area;
- (d) the project is on a plot of land measuring not less than—
- (i) one thousand (1000) square metres, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai; or
- (ii) two thousand (2000) square metres, where the project is located in any other place;
- (e) the project is the only housing project on the plot of land as specified in clause (d);
- (f) the CARPET AREA area of the residential unit comprised in the housing project does not exceed—
- (i) Thirty (30) square metres, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai or
- (ii) sixty (60) square metres, where the project is located in any other place;
- (g) where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual;
- (h) the project utilises—
- (i) not less than ninety per (90%) cent of the floor area ratio permissible in respect of the plot of land under the rules to be made by the Central Government or the State Government or the local authority, as the case may be, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai or
- (ii) not less than eighty per (80%) cent of such floor area ratio where such project is located in any place other, than the place referred to in sub-clause (i); and
- (i) the assessee maintains separate books of account in respect of the housing project.

(3) 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).

(4) Where the housing project is not completed within the period specified under clause (b) of sub-section (2) and in respect of which a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the period for completion so expires.

(5) Where any amount of profits and gains derived from the business of developing and building housing projects is claimed and allowed under this section for any assessment year, deduction to the extent of such profit and gains shall not be allowed under any other provisions of this Act.

(6) For the purposes of this section,—

(a) "CARPET AREA" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah 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 verandah area" means the area of the balcony or verandah, 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;

(b) "competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force;

(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 residential units with such other facilities and amenities as the competent authority may approve 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 household.'.

#### AMENDMENTS BY FINANCE ACT 2017,

These amendments will take effect from 1st April, 2018 and will, accordingly apply in relation to assessment year 2018-19 and subsequent years.

· in sub-section (2),—

- in clause (b), for the words "three years", the words "five years" shall be substituted; **Explanation** :- Period of Completion of Project is expanded from 3 years to 5 years.
  - in clauses (c) and (f), for the expression "built-up area" wherever they occur, the words "carpet area" shall be substituted;
  - the words "or within the distance, measured aerially, of twenty-five kilometres from the municipal limits of these cities" wherever they occur shall be omitted;

**Explanation** :- Condition of 25 km is removed so that deduction to projects of non metro areas which are nearby metro areas can claim deduction.

- in sub-section (6), for clause (a), the following clause shall be substituted, namely:—

'(a) "carpet area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.'.

#### FAQ ON SECTION 80IBA

##### 1) Will 25 km to be considered for FY 2016-2017?

**Solution:** – Yes, Because Amendment by Budget is prospective not retrospective.

##### 2) Whether nearby cities which are in 25 km from municipality are to be considered at par with metro cities for FY 2016-17?

**Solution:** – Yes, because same conditions are there for nearby cities which are within 25km from municipal limits of metro cities. And From FY 2017-18, nearby cities will be considered as non metro cities even though they will be within 25 km from municipal limits of metro cities.



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**3) Will Deduction be allowed if project is approved from 01-06-2016 to 31-03-2017 and it is within the distance, measured aerially, of twenty-five kilometers from the municipal limits of these cities?**

**Solution:** – No, because Section 80IBA with Finance Act 2016 covers 25km from municipal limits of metro cities.

If we go through legislative intention for which section 80IBA is formed, deduction should be allowed, till now there is no clarification on this.

**4) Suppose Plot of land is too much big, will it be possible that multiple projects can be made on that plot of land?**

**Solution:-** There should be one project on single plot of land and that should also be housing project, as per clause (d) of sub-section (2) of section 80IBA, the project is the only housing project on the plot of land as specified in clause (d);

**5) What if project is not completed within 5 Years?**

**Solution:-** the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the period for completion so expires.

**6) 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.

**7) 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.

**8) Which date will be considered as completion for housing project?**

**Solution:** – Completion date will be date when a certificate of completion of project as a whole is obtained in writing from the competent authority.

**9) Who will give Completion Certificate?**

**Solution:** – the authority empowered to approve the building plan by or under any law for the time being in force, i.e. Local Authority.

As per some case laws Architect can also give. But in maximum cases Certificate from local authority will be considered as date of completion.

**10) One person is making housing project for another person, will deduction be allowed?**

**Solution:** – No, Section 80IBA is housing project for general public not for personal purpose. It will be considered as works contract, and works-contract awarded by any person (including the Central Government or the State Government) will not be allowed as deduction.

**Few FAQ's Based on Section 80IB(10) which may be still relevant for Section 80IBA.**

**11) Projects approved as housing project, but there are some commercial user which is permitted in the residential units, Will Deduction u/s 80IBA will be allowed?**

**Solution:** – Yes, as per Case Law CIT Vs M/s Veena Developers (Supreme Court of India), The project is predominantly housing, residential project but the commercial activity in the residential units is permitted, Deduction will not be denied.

**Related Case Law:** Raviraj Kothari Punjabi Associates Vs Deputy Commissioner of Income-tax (ITAT Pune) .

**12) Where issue of Completion Certificate is delayed by Municipal Authority, Will deduction be allowed?**

**Solution:** – as per Gera Developments Pvt. Ltd Vs JCIT (ITAT Pune).

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

**Related Case Law:** M/s. Satish Bora and Associates Vs ACIT (ITAT Pune).

**13) Will deduction be allowed on additional income declared u/s 132(4) (<https://taxguru.in/income-tax/statement-1324-rebuttable-presumption-retracted-valid-evidences.html>)?**

**Solution:** – As per Case Law: Malpani Estates Vs ACIT (ITAT Pune).

Deduction U/s. 80-IB(10) available on additional income offered u/s 132(4) in return filed u/s 153A .

**14) Will Deduction be disallowed if assessee follows 'Project completion method' instead of 'Percentage completion method'?**

**Solution:** – As per Case Law: Commissioner of Income Tax Vs Satadhar Enterprises. (Gujarat High Court at Ahmedabad)

Deduction u/s 80-IB(10) can't be denied merely because Assessee uses "Project completion method"

**15) Is it necessary that Ownership of land is necessary to claim deduction u/s 80 IBA?**

**Solution:** – As per Case Law: Commissioner of Income-tax Vs Prathama Developers (Gujarat High Court)

Ownership of land not must to be eligible for deduction u/s. 80-IB(10)

**Related Case Law:** Commissioner of Income-tax, Ahmedabad -IV Vs Mahadev Developers (Gujarat High Court).

**Related Case Law:** Commissioner of Income tax Vs Sanghvi and Doshi Enterprise (Madras High Court) .

**Related Case Law:** Deputy Commissioner of Income-tax, Circle 3(3), Hyderabad Vs Vertex Homes (P.) Ltd. (ITAT Hyderabad).

**16) If expenses incurred to earn income on which assessee claimed deduction u/s 80IBA is disallowed by AO, Can Deduction u/s 80IBA in respect of disallowed expenses will be allowed?**

**Solution:** – As per Case Law: Deputy Commissioner of Income-tax Vs Magarpatta Township Development & Construction Co. (ITAT Pune).

Deduction U/s. 80IB allowable on expenses disallowed by AO .

**17) Can Business loss u/s 80IBA can be adjusted against other income?**

**Solution:** – As per Case Law: Assistant Commissioner of Income-tax Vs Sterling Developers (P.)Ltd. (ITAT Bangalore)

Loss of Eligible Business Unit u/s. 80IB(10) can be set off against other business income .

**18) If Assessee is following % Completion method, will deduction will be on propionate basis?**

**Solution:** – As per Case Law: Kura Homes (P.) Ltd. Vs Income-tax Officer, Ward-2(1) (ITAT Hyderabad)

Sec. 80-IB(10) -If profit is taxed on POCM method, deduction to be allowed on same method.

**Related Case Law:** Keerthi Estates (P.) Ltd. Vs Deputy Commissioner of Income-tax (ITAT Hyderabad)

Developer following percentage completion method entitled to deduction u/s. 80-IB(10).

**19) Will deduction u/s 80IBA be allowed for area which is not authorized under approved housing project?**

**Solution:** – As per Case Law: Income-tax Officer, Ward 4(3), Bangalore Vs Mahaveer Calyx (ITAT Bangalore)

Deduction u/s. 80-IB(10) cannot be denied for unauthorised excess construction

**20) Will deduction u/s 80IBA be denied for delay in permission for business?**

**Solution:** – As per Case Law: Commissioner of Income-tax – IV Vs Tarnetar Corporation (Gujarat High Court)

Deduction u/s. 80-IB(10) cannot be denied for mere delay in permission for business.

**21) Will deduction U/s 80IBA denied even though all conditions of 80IBA are complied?**

**Solution:** – As per Case Law: CIT V/s. Mystic Investments

S. 80-IB(10) – Exemption cannot be denied if Assessee complied with conditions.

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 9 Comments

*aditya deshpande* says:

what if a builder gets approval of basic fsi from the competent authority before 31 march 2019 and gets full potential sanctioned (TDR and paid premium fsi) afterwards, will deductions be allowed on the entire housing scheme ?



Reply ([/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=2034242#respond](https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=2034242#respond))

December 4, 2018 at 1:45 pm (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html#comment-2034242>)

*kumar* says:

We M/s. Rajarathnam Construction Private Limited having office in chennai, we are mainly concentrating in Residential Developments, only for middle and lower middle income people for the past 20 years. We have clarification on area specified in 80 iba 2018 income tax act.

in chennai or with in the chennai metropolitan limit – 30 Sq.mtrs  
beyond 25 kms from chennai metropolitan limit – 60 sq.mtrs.

We request you to clarify that the area specified in the section is 30 sq.mtrs and 60 sq.mtrs, how we will calculate wall thickness, which is shared by two flat owners. How exactly calculate the 30 and 60 sq.mtrs.

thanking you

Kumar V



Reply ([/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=2033007#respond](https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=2033007#respond))

November 23, 2018 at 1:30 pm (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html#comment-2033007>)

*harish* says:

What will be the Taxability if the Owner of the Property have entered into a Joint Venture with a Construction Firm and The Owner won't be incurring any construction cost.

 April 25,

Reply ([/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=2004345#respond](https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=2004345#respond))

2018 at 1:24 pm (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html#comment-2004345>)

*Pritam Longaonkar* says:

Converting Land in to stock in trade and after that land owner entering in to Joint venture with the builder. Will the land owner gets the benefits stated under 80IBA (as partners in JV).

 April 20,

Reply ([/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=2003477#respond](https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=2003477#respond))


2018 at 10:16 pm (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html#comment-2003477>)

*ASHOK SHARMA* says:

Navinji,

Read your article, it is very useful for the public.


I have a query that whether Income Tax Exemption will be allowed if a project consist units less then 60 sq mtrs and more then 60 sq mtrs both?  
If yes, in proportionate basis ?

 January [Reply \(/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=1991862#respond\)](#)

13, 2018 at 7:21 pm (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html/#comment-1991862>)

*Dharam Shah* says:


AMT IS APPLIVCABLE FOR NON corporate assessees?

 August 1, [Reply \(/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=1970759#respond\)](#)

2017 at 4:15 pm (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html/#comment-1970759>)

*CA Ajit Kanasagara* says:

Whether MAT & AMT are applicable to assess claiming deduction u/s-80 IBA ?  
If yes than there is not 100% income tax exemption u/s 80 IBA, as AMT at the rate of 19% approx to be payable by non corporate assess.

 May 30, [Reply \(/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=1959981#respond\)](#)

2017 at 5:13 pm (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html/#comment-1959981>)

*CA Prashant Agale* says:


Yes. Unfortunately MAT & AMT are applicable. You are correct, in effect 19% AMT is still applicable.

 [Reply \(/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=1961638#respond\)](#)

June 11, 2017 at 10:00 pm (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html/#comment-1961638>)

*Brijmohan* says:

The open terrace, open garden attached to your condo of 30 sq Mts carpet area is permissible  
Carpet area :: wall thick is to be added??

 May 16, [Reply \(/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html?replytocom=1957926#respond\)](#)

2017 at 10:59 am (<https://taxguru.in/income-tax/section-80iba-affordable-housing-scheme-amendments-faqs-relevant-case-laws-updated-finance-act-2017.html/#comment-1957926>)

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