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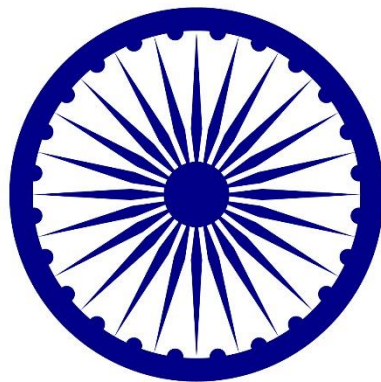
NEWSFLASH INDIA

ADDING VALUE

Issue:
December
2019

Latest news on compliance, tax and business
in India

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→ Taxation Laws (Amendment) Act, 2019 passed

Second half of 2019 has seen a slew of measures adopted by the Government of India to revive the Indian economy. One of such measures that had come as a pleasant surprise for Corporate India was promulgation of The Taxation Laws (Amendment) Ordinance, 2019 (“Ordinance”) in the month of September 2019. In a significant move, the government has introduced new tax brackets of 22 per cent (effective tax rate 25.17 per cent) and

15 per cent (effective tax rate 17.16 per cent) for domestic companies.

The Ordinance, with some modifications, has now been enacted as the Taxation (Laws) Amendment Act, 2019 (“Act”), after clearance from both the houses of Parliament followed by the Presidential assent on 11 December 2019. The Act has put to rest certain issues and controversies that had emanated from the Ordinance.

Taxation Laws (Amendment) Act, 2019 explained:

CONCESSIONAL TAX RATE OF 22 PER CENT [SECTION 115BAA]

Presently, companies with turnover of upto INR 4000 million during Financial Year (“FY”) 2017-18 are taxed at 25 per cent and others at 30 per cent. Existing Domestic Companies will now have an option to pay Income-Tax at the rate of 22 per cent subject to fulfilment of prescribed conditions. This will bring down the effective tax rates (inclusive of surcharge and cess) from 29.12/34.94 per cent (assuming that total income exceeds INR 100 million) respectively to 25.17 per cent.

In order to opt for the concessional tax rate, domestic companies will have to forego below benefits:

- Profit linked deduction under section 10AA for units in SEZ;
- Additional depreciation under section 32(1)(iia);
- Investment linked/project specific deductions under the sections 32AD, 33AB, 33ABA, 35AD, 35CCC and 35CCD;
- Deduction for expenditure on scientific research under various clauses of section 35; and
- Deductions Chapter VI-A (Heading C) from Sect. 80HH to Sect. 80RRB, other than the provisions governing deduction in respect of generation of new employment under section 80JJAA.

Further, such companies will also not be allowed set off of loss or depreciation brought forward from earlier years, if such loss or depreciation is attributable to any of the exemptions/benefits as mentioned above. Such brought forward loss and unabsorbed depreciation will be deemed to have been given full effect to and no further de

duction for the same will be allowed for subsequent years. Similar restriction is also applicable in respect of brought forward loss or unabsorbed depreciation of amalgamating or demerged company, otherwise available to amalgamated or resulting company for set off.

Once this option is exercised for any year; it cannot be subsequently withdrawn for the same or any other year.

COMPUTATION OF WRITTEN DOWN VALUE (WDV) OF BLOCK OF ASSETS

Companies may have existing unabsorbed depreciation, some portion of which may be attributable to additional depreciation. In the Ordinance, while opting for the concessional tax rate, domestic companies were required to forego unabsorbed additional depreciation. However, there was no corresponding adjustment provided under the Ordinance to WDV of the block of assets to the extent of such unabsorbed additional depreciation foregone. Therefore, there would have been a double whammy for the companies opting for tax rate of 22 per cent, i.e. they had to let go of unabsorbed additional depreciation and depreciation would not have been available on such portion, in absence of corresponding increase in the WDV of block of assets for such unabsorbed additional depreciation foregone, leading to a permanent loss of depreciation to the extent of such unabsorbed additional depreciation foregone.

It has now been clarified that, if a company has unabsorbed depreciation on account of additional depreciation and it opts for lower tax rate of 22 per cent, then an adjustment will be made in the WDV of the block of assets as on 1 April 2019.

Thus, existing companies opting for reduced tax rates in the current financial year will be allowed to re-compute and increase the WDV as on 1 April 2019. This adjustment has been provided only for WDV of block of assets as on 1 April 2019 and as such, it appears that similar benefit may not be available, in case option of 22 per cent tax rate is chosen in subsequent year, unless there is a specific amendment to the concerned provision.

CONCESSIONAL TAX RATE OF 15 PER CENT [SECTION 115BAB]

New domestic companies engaged in manufacturing, will have an option to pay income-tax at the rate of 15 per cent. This benefit is available to companies, inter alia, fulfilling the following conditions:

- it is set up and incorporated on or after 1 October 2019;
- it has commenced production on or before 31 March 2023;
- it does not avail any exemption/incentives and set off of brought forward loss and unabsorbed depreciation, as stated above in context of provisions of section 115BAA; and
- it is not engaged in any business, other than business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

Such newly incorporated companies shall not be formed by splitting up, reconstruction of business already in existence. Further, such companies should not use machinery or plant previously used for any purpose (barring few relaxations). Some other conditions are also prescribed to be complied with.

It is also clarified that where the total income of such companies includes income, which is neither derived nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided, such income shall be taxed at the rate of 22 per cent and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income.

It is clarified that, if the option exercised under this section becomes invalid, due to violation of conditions prescribed therein, then the other provisions of the Act will apply to such person, as if the option has not been exercised for

the relevant year and subsequent years. In certain circumstances, the company would be eligible to opt for concessional tax rate of 22 per cent under section 115BAA.

Further, there are provisions that could be triggered by the tax officer in certain circumstances, to apply higher tax rate of 30 per cent, in case excessive profit is offered to concessional tax rate.

SURCHARGE FOR COMPANIES AVAILING REDUCED RATES

For companies availing the benefit of the above provisions (Sections 115BAA and Sections 115BAB), surcharge at 10 per cent would apply irrespective of amount of total income.

RATIONALIZATION OF MAT PROVISIONS [SECTION 115JB]

MAT rate has been reduced from the existing 18 per cent to 15 per cent (effective rates reduced from 19.24/20.59/21.55 per cent to 15.60/16.90/17.46 per cent, depending upon the rate of surcharge applicable for different total income threshold).

Further, it has been clarified that companies opting for concessional tax rates under sections 115BAA and 115BAB shall not be required to pay MAT.

Company that exercises the option of the concessional tax rate of 22 per cent, will not be eligible for set off of MAT credit brought forward from earlier years.

CLARIFICATION IN RESPECT OF BUY BACK TAX [SECTION 115QA]

It is clarified that "Buy Back Tax" shall not apply to buy-back of shares listed on a recognised stock exchange, in respect of which public announcement has been made on or before 5 July 2019 in accordance with the provisions of the Securities and Exchange Board of India (Buyback of Securities) Regulations, 2018 made under the Securities and Exchange Board of India Act, 1992.

OTHER AMENDMENTS

There have been certain other amendments in respect of rate of surcharge applicable in case income includes capital gains. Surcharge in respect of capital gains is capped at 15 per cent.

SUMMARY

Particulars	Normal Provisions	Section 115BA	Section 115BAA	Section 115BAB
First Year of Applicability	Not applicable	FY 2016-17	FY 2019-20	FY 2019-20
Category of companies	Existing companies willing to avail deductions/exemptions under ITA	Companies engaged in manufacturing and set-up and registered on or after 1 st day of March 2016	All domestic companies	Companies engaged in manufacturing and set-up and registered on or after 1 st day of October 2019
Tax rate	30 per cent, in case turnover exceeds INR 4,000 million for FY 2017-18; else, 25 per cent	25 per cent	22 per cent	15 per cent
Surcharge	<ul style="list-style-type: none"> - 7 per cent in case the total income exceeds INR 10 million - 12 per cent where the total income exceeds INR 100 million 	<ul style="list-style-type: none"> - 7 per cent in case the total income exceeds INR 10 million - 12 per cent where the total income exceeds INR 100 million 	10 per cent irrespective of amount of total income	10 per cent irrespective of amount of total income
Cess	4 per cent	4 per cent	4 per cent	4 per cent
Effective Tax rate (Assuming)	31.2/33.38/34.94 per cent, if turnover exceeds INR 4000 million for FY 2017-18; else, 26/27.82/29.12 per cent	26/27.82/29.12 per cent	25.17 per cent	17.16 per cent
MAT applicability and rate	15 per cent	15 per cent	Not Applicable	Not Applicable
Effective Tax rate under MAT	15.6/16.69/17.47 per cent	15.6/16.69/17.47 per cent	Not Applicable	Not Applicable
Availability of specified deductions/carry forward and set off of losses/incentives under ITA	Yes	No	No (except for brought forward loss and unabsorbed depreciation to the extent not attributable to such specified deductions/incentives).	No

→ Concluding remarks

Reduction of tax rates is a welcome move of the Government of India for providing an impetus to the economy. Companies will have to evaluate how these changes impact the tax costs and businesses,

in specific facts and circumstances of each case. For discussion and analysis, please contact us.

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