The Taxation Laws (Amendment) Ordinance, 2019

Background

The Government in recent weeks has announced several booster measures to revive the current slow-down in the Indian economy. A slew of game changing tax measures were announced by the Finance Minister on 20 September 2019, which are targeted to reduce corporate tax rates across the board, provide impetus to “Make in India” initiative and bolster foreign investment. With these measures, the Indian tax rates could be regarded as extremely competitive and would seek to attract manufacturing investments post the current US-China trade stand-off.

Towards this end, the Government has brought in the Taxation Laws (Amendment) Ordinance, 2019. A quick snapshot of the concessional tax regimes is as below:

Section	Applicability*	Tax Rate**	Whether Minimum Alternate Tax applicable?
Section 115BA	Domestic manufacturing companies (set up on or after 1 March 2016)	29.12%	Yes
Section 115BAA	All Domestic companies	25.17%	No
Section 115BAB	New manufacturing companies (set up and registered on or after 1 October 2019)	17.16%	No

Section	Applicability*	Tax Rate**	Whether Minimum Alternate Tax applicable?
Existing regime	Domestic companies where turnover did not exceed INR 4000 mn in FY 2017-18	29.12%	Yes
	Domestic companies where turnover exceeded INR 4000 mn in FY 2017-18	34.94%	Yes

** Subject to fulfilment of specified conditions*

***The tax rates have been computed after considering the highest rate of surcharge and cess*

The domestic companies will have a flexibility to opt for either of the regimes subject to fulfilment of prescribed conditions.

The salient features of the Ordinance which amends the Income-tax Act, 1961 (Act) and the Finance (No. 2) Act, 2019 are summarised hereinafter:

Concessional tax rate for existing domestic companies [effective tax rate of 25.17%]

A new section 115BAA has been introduced which provides a concessional tax rate of 22% (plus surcharge of 10% and cess of 4%) for **<u>all domestic companies</u>** subject to fulfilment of conditions specified below. Minimum Alternate Tax (MAT) provisions will not be applicable to companies opting for this concessional tax regime.

- This concession rate regime is applicable to all domestic companies fulfilling the conditions and extends to all sectors without any restriction.
- The domestic company will not be allowed to claim the following deductions / incentives:
  - Deduction under section 10AA (SEZ Units)
  - Accelerated depreciation under section 32(1)(iia)
  - Deduction under section 32AD (Investments in notified backward area)
  - Deduction under section 33AB (Tea/coffee/rubber development allowance)
  - Deduction under section 33ABA (Site restoration fund)
  - Weighted deduction under section 35(2AB) (expenditure on in-house scientific research)
  - Deduction under section 35AD (expenditure on specified business)
  - Deduction under section 35CCC (expenditure on agricultural extension project)
  - Deduction under section 35CCD (expenditure on skill development project)
  - Deduction under Part C of Chapter VI-A of the Act such as tax holiday under section 80-IA, 80-IAB and 80-IE (other than deduction under section 80JJA for additional wages to employees)
- Losses brought forward attributable to the aforementioned deductions/allowances claimed in earlier years to lapse

- Depreciation to be allowed as per the rates to be prescribed
- Option to avail the concessional tax rate to be exercised on or before the due date for filing the income tax return. The option once exercised cannot be subsequently withdrawn
- Companies currently availing incentives/deductions listed above will have an option to move into this concessional tax regime at any point in time

Concessional tax rate for new domestic manufacturing companies [effective tax rate of 17.16%]

A new section 115BAB has been introduced which provides a concessional tax rate of 15% (plus surcharge of 10% and cess of 4%) for domestic manufacturing companies subject to fulfilment of conditions specified below. MAT provisions will not be applicable to companies opting for this concessional tax regime.

- Companies to be set up and registered on or after 1 October 2019 and has commenced manufacturing on or before 31 March 2023
- It should not be formed by splitting up or reconstruction of an existing business
- It does not use second-hand plant/machinery, except in certain prescribed scenarios
- It does not use any building that was previously used as a hotel or a convention centre
- It will not be allowed to claim deductions/incentives as listed in section 115BAA above
- Transactions between such domestic company and person closely connected shall be subject to transfer pricing
- Option to avail concessional tax regime is to be exercised on or before the due date for furnishing the Company's first return of income. The option once exercised cannot be subsequently withdrawn

An eligible manufacturing company availing concessional tax regime under section 115BA (i.e. 25% tax rate) is permitted to withdraw from that regime and avail the concessional tax regime under section 115BAB.

Reduction in MAT rate (Section 115JB)

MAT rate reduced from 18.5% to 15% for all companies which are subject to MAT provisions. The maximum effective MAT rate will now be 17.47%.

Relief from Buy-back tax (Section 115QA)

Buy-back tax provisions will not be applicable where a public announcement of the buy-back of listed company's shares was made before 5 July 2019, in accordance with applicable SEBI regulations.

Rationalisation of surcharge rates proposed under Finance (No. 2) Act, 2019

The enhanced surcharge rates on Foreign Portfolio Investors (FPIs) (constituted as Trust, Association of Persons (AOP), Body of Individuals (BOI), etc) has been withdrawn in respect of capital gains earned on transfer of securities (including derivatives). No relief in respect of any other income earned by such FPIs.

The revised effective tax rate will be as under:

Particulars	Effective tax rate*		
	Prior to Finance (No. 2) Act, 2019	Post Finance (No. 2) Act, 2019	Post Ordinance
Capital gains			
Short term capital gains on equity shares/ units of equity-oriented funds or Business Trust [subjected to Securities Transaction Tax (STT)]	17.94%	21.37%	17.94%
Long term capital gains on equity shares/ units of equity-oriented funds or Business Trust [subjected to STT]	11.96%	14.25%	11.96%
Short term capital gains on derivatives	35.88%	42.74%	35.88%
Short-term capital gains on other securities#	35.88%	42.74%	35.88%
Long-term capital gains on other securities#	11.96%	14.25%	11.96%
Interest income			
Interest earned on a specified rupee denominated bond of an Indian company or a Government security (subject to conditions)	5.98%	7.12%	7.12%
Interest earned on other debt securities	23.92%	28.50%	28.50%

**The tax rates have been computed after considering the highest rate of surcharge and cess*

 # As per Securities Contracts (Regulation) Act, 1956

- The enhanced surcharge rate of 25% and 37% imposed under the Finance (No. 2) Act, 2019 on resident individuals, AOP, BOI, etc has been withdrawn in respect of capital gains earned on transfer of equity shares, units of equity-oriented funds or Business Trust (subjected to STT).

Dhruva comments

The rationalisation of tax rates makes India competitive as an investment destinations vis-a-vis many ASEAN countries. This also provides manufacturing opportunities with the global supply chains being disrupted due to the ongoing tariff war between USA and China.

The amendments brought in also will scope for debate on certain issues such as if a domestic manufacturing company, set up on or after 1 March 2016, which has exercised the option to be governed under the concessional regime of 25% can switch to the lower tax rate of 22% available for all domestic companies. Another issue that may be required to be addressed is whether the MAT credit brought forward from earlier years shall be allowed to be set off against regular tax liability of the companies availing concessional tax regime under section 115BAA of the Act. Companies availing incentives and deductions will need to do a comparative analysis to opt for either the old or the new tax regime.

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