Tax Alert: Government promulgates Ordinance granting various tax concessions

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Summary

The government has amended the Income-tax Act, 1961 (the Act) vide **Taxation Laws (Amendment) Ordinance, 2019** (Ordinance). The Ordinance provides certain tax concessions to domestic companies, foreign portfolio investors and other taxpayers. The amendments, inter alia, include reduction in corporate tax rate to 22% for domestic companies which are not availing specified tax exemptions/incentives, reduced corporate tax rate of 15% applicable for new manufacturing companies which are not availing specified tax exemptions/incentives, roll-back of enhanced surcharge on capital gains and relief from buy-back tax in case of listed companies where public announcement of buy-back was made before 5 July 2019.

Background

The government has in the last few weeks announced various measures to provide impetus to the economy. With an objective to provide a further fillip to businesses, the government has, on 20 September 2019, promulgated the Ordinance which makes certain important amendments in the Act.

Amendments brought in by the Ordinance

Reduction of tax rate for domestic companies with effect from Financial Year 2019-20

The government has reduced Corporate Tax Rate (CTR) and Minimum Alternate Tax (MAT) rate for certain domestic companies.

a. **Company not availing specified tax exemptions/incentives**[1]

CTR *	**22%** **(reduced from existing CTR of 25%/30%[2])**
MAT *	Not applicable (existing rate of 18.5%)
Conditions to be met	The company should not avail specified tax exemptions/ incentives

The tax exemption/incentive to be foregone for this purpose includes the following:

- **Section 10AA:** Tax holiday available to units in a Special Economic Zone
- **Section 32(1)(iia):** Additional depreciation

[1] New section 115BAA inserted in the Act

* plus applicable surcharge and cess

- **Section 32AD:** Investment in new plant or machinery in notified backward areas in certain states
- **Sections 33AB, 33ABA:** Tax incentives available in case of tea development account, coffee development account and rubber development account
- **Section 33ABA:** Tax incentive related to site restoration account for a business consisting of the prospecting, or extraction or production of, petroleum or natural gas or both in India
- **Section 35AD:** Deduction for capital expenditure incurred on specified businesses
- **Certain sub-sections/clauses of Section 35:** Expenditure on scientific research
- **Section 35CCC:** Expenditure on agriculture extension project
- **Chapter VI-A[2]:** Specified deductions (other than section 80JJAA)

Additionally, the total income of the domestic company is required to be computed without set-off or any loss attributable to any of the exemptions/incentives mentioned above. Depreciation would be claimed in the manner, which will be prescribed.

b. Companies availing tax exemptions/ incentives

CTR *	**Existing CTR of 25%/30% to continue**
MAT*	Reduced from 18.5% to 15%
Option to avail reduced rate*	• Can opt for the reduced rate of 22% after expiry of tax holiday/exemption period • After the exercise of the option for payment of CTR at 22%, it cannot be subsequently withdrawn

c. New domestic company engaged in manufacturing activities[3]

CTR *	**15%**
MAT	Not applicable
Conditions to be met	• The company should be incorporated on or after 1 October 2019 • It commences manufacturing by 31 March 2023 • It does not avail specified tax exemption/incentive (same as mentioned in para (a) above) • The company is not formed by splitting up or reconstruction of business already in existence • The company does not, subject to certain specified conditions, use any machinery or plant

[2] Under the heading 'C-Deductions in respect of certain income'

[3] New section 115BAB inserted

previously used for any purpose

- The company is not engaged in any business, other than business of manufacture/production of any article and research in relation to such article , or distribution of such article manufactured/ produced by it

Similar provisions as in case of para (a) above relating to loss and depreciation would be applicable. Provisions related to specified domestic transactions[4] would also need to be evaluated in such cases.

Rollback of enhanced surcharge introduced in Finance (No.2) Act, 2019

Finance (No. 2) Act, 2019 had increased the rate of surcharge applicable to certain categories of taxpayers including individuals, Hindu Undivided Families (HUFs), Association of Persons (AOPs), Body of Individuals (BOIs) and Artificial Juridical Persons (AJIs). The surcharge was increased to 25% on income between INR 2 crore and INR 5 crore and to 37% on income above INR 5 crore.

The Ordinance provides that increased surcharge on tax (of 25% and 37%) shall not apply on capital gains arising:

- on sale of equity share in a company or a unit of an equity oriented fund or a unit of a business trust liable for securities transaction tax, in the hands of an Individual, HUF, AOP, BOI and AJP
- on the sale of any security including derivatives, in the hands of Foreign Portfolio Investors (FPIs)

Limited rollback of buy-back tax on listed companies

Finance (No 2) Act, 2019 extended the levy of buy-back tax on listed companies with effect from 5 July 2019.

The Ordinance has clarified that listed companies which had already made the public announcement of buy-back before 5 July 2019 will not be subject to the aforesaid buy-back tax.

[4] Under section 92BA

* Plus applicable surcharge and cess

Our comments

Reduction in corporate tax rates had been a long-standing demand by the Indian corporate sector. It aligns the rates with those of several developed economies. The reduced rate of 22% for existing domestic companies and 15% for new companies engaged in manufacturing activities is expected to revive investments and business sentiments. Roll back of enhanced surcharge on capital gains is also a welcome step that will address the concerns of domestic and foreign investors. The change in tax rates for domestic companies, however, further widens the gap between the tax rates for such companies vis-à-vis the foreign companies (40%) and LLPs (30%).

Existing domestic companies would be required to make a decision on opting for the reduced tax rates before the due date for filing of tax return. Accordingly, they would now need to evaluate their tax liability under both options, i.e., the reduced tax rates vis-à-vis the existing tax rates, while factoring possible partial lapse of losses and MAT credit.

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