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Technology, Media, and Telecom (TMT) Newsflash

Delivering clarity

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The Taxation Laws (Amendment) Ordinance, 2019

To promote growth and investments in the country, the Ministry of Finance has announced important fiscal reliefs *vide a* press note dated 20 September 2019. The President of India has promulgated the Taxation Laws (Amendment) Ordinance, 2019 (Ordinance 2019), which has been published in the *Gazette of India* on 20 September 2019. These new provisions will come into effect from FY 2019-20, and their salient features are discussed below.

Reduction in corporate tax rates

The Government of India vide Ordinance 2019 has introduced changes in the corporate tax rate structure effective from the financial year beginning 1 April 2019. According to the Ordinance 2019, domestic companies can opt to pay at an effective tax rate of 25.17 percent (i.e. 22 percent plus a 10 percent surcharge and a 4 percent cess) against the existing maximum rate of 34.944 percent (including applicable surcharge and cess).

Companies opting for this new tax regime (concessional rate) would not be subject to provisions of minimum alternate tax (MAT).

Limitations

- The concessional rate shall be subject to companies not availing specified tax incentives or exemptions (including deduction under section 10AA, additional depreciation on plant and machinery, and profit-linked incentives under Chapter VI-A).
- Companies opting for the new tax regime would not be able to set off any loss carried forward from any earlier assessment year if the loss is attributable to any incentives or exemptions mentioned above.
- Once exercised by the company, the option of paying taxes at concessional rate cannot be subsequently withdrawn. It needs to be exercised before filing tax return.

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Corporate tax for new manufacturing companies

To attract fresh investment in manufacturing, domestic manufacturing companies incorporated on or after 1 October 2019 and commencing production on or before 31 March 2023, have an option to pay corporate tax at a reduced rate of 17.16 percent (i.e. 15 percent plus a 10 percent surcharge and a 4 percent cess) after satisfying the prescribed conditions.

Companies opting for the new tax regime would not be subject to provisions of MAT.

Limitations on claiming incentives/exemptions and setting off losses carried forward from any earlier assessment year would remain unchanged, as provided in the concessional tax regime mentioned in point(1) above.

Reduction in tax rate payable under MAT

To provide relief to companies that continue to avail exemptions and incentives and do not opt for the concessional tax rate covered in points (1) and (2) above, MAT has been reduced from 18.5 percent to 15 percent (plus applicable surcharge and cess).

Companies that continue to claim tax holidays/deductions/exemptions and are not eligible for the new tax regime, have a reduced MAT rate of 17.47 percent (against the earlier 21.55 percent). The decreased rate helps reduce companies' cash outflow on account of MAT.

Buy-back tax on Indian companies

No tax on the buy-back of shares will be applicable if the listed companies have already made a public announcement of buy-back before 5 July 2019. This clarification should help listed companies that have not factored in the buyback tax when the scheme was announced.

Extended scope of corporate social security (CSR) spending

The finance minister has also announced an increased scope for CSR activities. Companies can now allocate 2 percent of its profits inter alia on: (a) incubators funded by central or state government or any agency or public-sector undertakings of central and state government, (b) IITs, (c) public-funded universities, (d) national laboratories, and (e) other specified autonomous bodies engaged in conducting research in science, technology, engineering, and medicine promoting sustainable development goals. These measures would help promote research and development, and open up opportunities for incubators and start-ups.

We believe these radical rate reductions will provide the much needed boost to companies across various industries, including TMT.

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Telecom

As regards the telecom sector, specific deductions provided under sections 35ABA *(expenditure for obtaining right to use spectrum for telecommunication services)* and 35ABB *(expenditure for obtaining a licence to operate telecommunication services)* are not affected by the change. Companies having brought forward losses/unabsorbed depreciation will need to evaluate whether it is beneficial to move to the concessional tax regime in FY 2019-20 or post utilisation of the brought forward losses / unabsorbed depreciation.

Technology

IT/ITeS companies claiming SEZ tax holiday would need to evaluate the option of moving to a new tax regime or continuing with the current regime (considering its effective tax cost). The Ordinance 2019 does not clarify whether brought forward MAT credit would be available under the concessional regime. This will have an impact on companies with unutilised MAT credit. A clarification from the government would put doubts around its claim to rest. Depending on its specific fact pattern, a company may choose to opt for the concessional tax regime after the expiry of its tax holiday/exemption period. Reduced MAT rate (from 21.55 percent to 17.47 percent) will enable the faster absorption of MAT credit available with companies continuing under the current regime.

These measures cumulatively should encourage IT/ITES companies that have been relentlessly following up on an extension of the SEZ tax holiday.

The demand for companies in the technology sector (e.g., semi-conductors, servers, storage, and telecom hardware) is currently being met mainly through imports. This sector is likely to be benefitted significantly when a new manufacturing entity is set up.

. A lucrative corporate tax rate of 15 percent (17.16 percent, including surcharge and cess) should put India on top of the global landscape for technology companies evaluating options to set up manufacturing hubs.

While most companies would eventually want to move to the concessional tax regime, the timing will depend on detailed evaluation based on each company's specific fact pattern.

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Key indirect tax announcements

Place of supply of chip design software R&D services

In its 37th meeting held on 20 September 2019, the GST council has clarified that the place of supply of chip design software R&D services that Indian companies provide to foreign clients using sample test kits in India, shall be the location of foreign clients (i.e., outside India). These services would qualify as export of services subject to the fulfilment of other conditions.

Such clarifications should put an end to queries raised during audit/refund processing on the place of supply for such services.

Scheme for Remission of Duties or Taxes on Export Product (RoDTEP) to replace Merchandise Export from India Scheme (MEIS)

To promote exports, the finance minister on 14 September 2019 announced that RoDTEP would replace MEIS. Rebate on account of non-creditable taxes (such as excise duty on fuel used in transportation and input taxes on the transport sector) is expected to be embedded in the new scheme.

Once the guidelines for the new scheme are announced, exporters should be required to factor in the benefits available while determining the prices of goods being exported (as currently the MEIS benefit is considered in prices).

Automated refund module of input tax credit under GST

The finance minister has announced that the refund of input tax credit under GST would be fully automated. The module for such automated refunds is likely to be implemented by the end of September 2019. Moreover, the GST council has announced that an integrated refund module with a single disbursal authority will be introduced on 24 September 2019.

Such announcements should result in the quick disbursal of refund amount and help resolve cash flow issues that exporters face.

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