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Corporate tax rates slashed and fiscal relief announced

Ordinance to be issued for amendment to the Finance (No. 2) Act, 2019 slashing the corporate tax rates and other fiscal reliefs

Background

The Finance Bill 2019 was presented in the Parliament on 1 February 2019 which was enacted into law on 21 February 2019.

The Finance (No.2) Bill 2019 was presented in the Parliament on 5 July 2019 and was enacted into law on 1 August 2019.

The Finance Act lays down the rate of tax that should apply for the assessment year 2019-20 and the rate of tax that should apply for withholding tax and advance tax for the assessment year 2020-21. The Finance Act also proposes tax amendments *inter alia* to the provisions of the Income-tax Act 1961 (the Act).

The Central Board of Direct Taxes had issued a Press Release on 24 August 2019 providing rollback on enhanced surcharge on capital gains arising on specified securities for specified taxpayers.

With the intent to promote growth and investments, the Ministry of Finance has announced important fiscal relief vide a Press Note dated 20 September 2019.

Press Note

The Ministry of Finance has announced that the Taxation Laws (Amendment) Ordinance 2019 would be promulgated to make certain amendments in the Income-tax Act 1961 and the Finance (No. 2) Act 2019.

The salient features of these proposed amendments as mentioned in the Press Note are:

- For promoting growth and investment, with effect from financial year 1 April 2019 till 31 March 2020 (FY 2019-20), any domestic company which opts for not availing any exemption or incentives, shall be liable to a reduced income-tax rate of 22 percent. The effective tax rate for such companies shall be 25.17 percent inclusive of surcharge and cess, and provisions of Minimum Alternate Tax (MAT) shall not be applicable.
- As a measure for giving a boost to the ailing manufacturing sector, the tax rate applicable for FY 19-20 to any new domestic company incorporated on or after 1 October 2019 which makes fresh investment in manufacturing, and which does not avail any exemption/incentive and commences production on or before 31st March 2023, should be 15 percent. The effective tax rate for such companies shall be 17.01 percent inclusive of surcharge and cess; and MAT provisions shall not be applicable.
- A company which does not opt for the concessional tax regime and avails the tax exemption/incentive shall continue to pay tax at the pre-amended rate. However, these companies can opt for the concessional tax regime after expiry of their tax holiday/exemption period. After the exercise of the option they shall be liable to pay tax at the rate of 22 percent and option once exercised cannot be subsequently withdrawn. Further, in order to provide relief

to companies which continue to avail exemptions/incentives, the rate of MAT shall be applicable at reduced rate of 15 percent from 18.5 percent for FY 19-20.

- The enhanced surcharge introduced by the Finance (No.2) Act, 2019 on tax payable shall not apply on:
  - Capital gains arising on sale of equity shares 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 Artificial Juridical Person (AJP).
  - Capital gains arising on sale of any security including derivatives, in the hands of Foreign Portfolio Investors (FPIs).
- Listed companies which have already made a public announcement of buy back of shares before 5 July 2019, should not be chargeable to income distribution tax on such buy back under section 115QA of the Act.
- Expanding the scope for the spending for Corporate Social Responsibility (CSR) activities, Indian companies can spend on incubators funded by central or state governments or any agency or Public Sector Undertaking of central or state governments. Further, it shall also cover contributions to public funded universities, IITs, National Laboratories and Autonomous Bodies (established under the auspices of government institutions such as ICAR, ICMR, CSIR, DAE, DRDO, DST, Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

Observations

The Press Note mentions that the total revenue foregone for the reduction in corporate tax rate and other relief is estimated at Rs. 1,45,000 crore, the working of which may be shared along with issue of the Ordinance.

This is only a Press Release and so the Ordinance will need to be looked into for the actual amendments in the respective sections of the Acts.

New companies in manufacturing sector will get the benefits of lower rate of tax subject to them not claiming incentives / exemptions. Incentives and exemptions that they would not claim should be similar to those excluded presently for domestic companies under section 115BA (c) of the Act, like deduction for depreciation, specified capital expenditure etc.

Grandfathering of buyback of shares by listed companies is a welcome move as otherwise the companies would have a higher outflow than what was approved by the Board of Directors and the shareholders and in some instances securities transaction tax was also paid during the transition period from the issue of the Finance (No.2) Bill 2019 and its enactment. However, some challenges in implementation of income distribution tax for listed companies on buy back remain, such as:

- Computation of income on buy back for the purpose of levy of income distribution tax. Rule 40BB of the Income-tax Rules, 1962 was issued for the calculation of income in the case of unlisted shares. Presently it should apply for listed shares also unless there is an amendment to the same or a new rule is issued
- In case of listed companies the cost of acquisition could be different from the price at which the shares have been issued by the company
- Can foreign shareholders claim credit for income distribution tax in their home countries?

With the intent to stabilise the flow of the funds into capital markets, the Ministry of Finance had issued two Press Release on 23rd and 24th August for roll back of enhanced surcharge on tax on specified capital gains. Now the Ordinance is proposing a complete rollback of enhanced surcharge on all capital gains arising on sale of all securities in case of non-corporate FPIs, so even capital gains arising on debt securities and units of debt mutual funds, are covered in case of FPIs. So the enhanced surcharge should now apply on other income, mainly interest income in case of FPI.

It appears that surcharge rate on tax payable by Corporates is also being changed to 10 percent instead of the current dual 7 percent or 12 percent rate in light of the effective tax rates mentioned above. The provision in the Ordinance will provide more clarity.

The institutions now covered for CSR spends should hopefully be included either in section 35AC or section 80G or section 80GGA of the Act for companies to claim deduction for such spends.