

## Tax Alert | Delivering clarity

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### Glimpses of "The Taxation Laws (Amendment) Ordinance, 2019"

Key Highlights of "The Taxation Laws (Amendment) Ordinance, 2019"

#### Background

With an intent to promote growth and investments, the Ministry of Finance has announced important fiscal reliefs *vide* Press Note dated 20 September 2019. The President of India has promulgated The Taxation Law (Amendment) Ordinance, 2019 (Ordinance 2019) which has been published in the Gazette of India on 20 September, 2019.

#### Coming into force

The Ordinance 2019 shall come into force at once, unless specified otherwise.

The key tax amendments to the Income tax Act, 1961 and the Finance (No.2) Act 2019 made *vide* Ordinance 2019 are:

#### Amendment to Income-tax Act, 1961

##### Corporate tax

Currently, the tax rate applicable to domestic company are:

(i)	where its total turnover or the gross receipt in the previous year 2017-18 does not exceed four hundred crore rupees;	25 percent of the total income;
(ii)	other than that referred to in item (i)	30 percent of the total income

The rate of tax will be further increased by applicable surcharge and cess thereon.

However, domestic manufacturing companies set-up and registered on or after 1 March 2016 could at their option claim concessional tax rate of 25 percent plus surcharge and cess thereon, on the income computed without considering specified deductions. (Section 115BA of the Act).

The Ordinance has reduced the corporate tax rates for domestic companies (not claiming specified incentives and deductions) – Section 115BAA and domestic manufacturing companies (not claiming specified incentives and deductions) set-up and registered on or after 1 October 2019 (section 115BAB).

The domestic manufacturing company that claims lower rate of tax under the new section 115BAB can withdraw its option to claim lower rate of tax under the existing section 115BA.

#### Concessional tax rate for certain domestic companies (Section 115BAA):

- Domestic company<sup>1</sup> can opt for a lower rate of tax of 22 percent plus surcharge and cess for AY 2020-21 onwards, subject to the total income of the company computed:
  - Without any deduction under the sections 10AA (tax holiday for SEZ units), 32(1)(ia) (additional depreciations), 32AD (additional deduction for investment in machinery), 33AB (deduction for tea/coffee/rubber development account), 33ABA (site restoration fund), 35(1)(ii) or (ia) or (iii), 35(2AA), 35(2AB)(weighted deduction for expenditure on scientific research), 35AD (capital expenditure for specified business), 35CCC (expenditure on agriculture extension projects) or 35CCD (skill development project) or any under any provision of Chapter VI-A under the heading "C - deductions in respect of certain incomes" other than section 80JJAA of the Act.
  - Without any set-off of any loss carried forward from any earlier assessment year if such loss is attributable to any deductions referred above. Such loss shall be deemed to be given full effect to and no further deduction for such loss shall be allowed for any subsequent year.
  - By claiming depreciation if any under section 32 of the Act other than 32(1)(ia) of the Act, determined in the prescribed manner.
- The option is to be exercised in the prescribed manner on or before due date of filing the Tax Return.
- Once option is exercised, then it cannot be subsequently withdrawn for the same or any other tax year.

Deduction under section 32 for normal depreciation is allowed in prescribed manner but additional depreciation is not allowed. Further deduction under chapter VI A-Chapter C is not allowed except for deduction under section 80JJAA in respect of additional employment. Business loss carried forward is allowed as a deduction except for loss arising that is attributable to the deductions claimed under the specified sections mentioned above.

#### **Concessional Tax rate for new domestic manufacturing companies (Section 115BAB):**

- Domestic manufacturing company can opt for a lower rate of tax of 15 percent plus surcharge and cess for AY 2020-21 onwards, subject to fulfilment of following conditions:
  - Company should be set-up and registered on or after 1 October, 2019
  - Manufacturing to be commenced on or before 31 March, 2023 and the company is not formed by splitting up or the reconstruction, of a business already in existence. Also the company does not use any machinery or plant previously used for any purpose.
  - Company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of such article or thing manufactures or produced by it, and
  - The total income of the company has been computed
    - Without any deduction under the sections 10AA, 32(1)(ia), 32AD, 33AB, 33ABA, 35(1)(ii) or (ia) or (iii), 35(2AA), 35(2AB), 35AD, 35CCC or 35CCD or any under any provision of Chapter VI-A under the heading "C - deductions in respect of certain incomes" other than section 80JJAA of the Act.

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<sup>1</sup> Section 2(22A) of the Act "domestic company" means an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income ;

- Without any set-off of any loss carried forward from any earlier assessment year if such loss is attributable to any deductions referred above. Such loss shall be deemed to be given full effect to and no further deduction for such loss shall be allowed for any subsequent year.
  - By claiming depreciation if any under section 32 of the Act other than 32(1)(ia) of the Act, determined in the prescribed manner.
- The option to be exercised in the prescribed manner on or before due date of filing the Tax Return.
  - Once option is exercised, then it cannot be subsequently withdrawn for the same or any other tax year.

Where it appears to the Assessing Officer that, owing to close connection between the company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the company, more than the ordinary profits which might be expected to arise, the Assessing Officer shall, in computing the profits and gains of such company for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom. Further in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F.

Anti-abuse provisions have been inserted so that there is no splitting up of existing business nor shifting of profits between close / associated companies to avail the lower rate of tax.

### **Relief in rate of Minimum Alternate Tax (MAT) (Section 115JB)**

- Current rate of MAT of 18.5 percent plus surcharge and cess has been reduced to 15 percent plus surcharge and cess w.e.f assessment year 2020-21 onwards.
- MAT provisions shall not be applicable to companies who have opted to be taxed under section 115BAA and section 115BAB of the Act.

The MAT liability for units located in International Financial Services Centre (IFSC) shall continue to be at the rate of 9 percent as there is no change in section 115JB(7) of the Act.

### **Relief to Indian Companies that had announced Buy Back of listed shares before the Finance (No.2) Bill 2019 (Section 115QA)**

Income distribution tax as per section 115QA will not be applicable to Indian companies which have already made a public announcement for buy back of listed shares before 5 July 2019 [the date of presentation of the Finance (No.2) Bill 2019 in Parliament] in accordance with the provisions of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 made under the Securities and Exchange Board of India Act, 1992 as amended from time to time.

### **Amendment to the Finance (No.2) Act 2019**

#### **Rollback of enhanced surcharge in case of specified persons and specified income**

The Finance (No.2) Act 2019 had increased the rate of surcharge applicable for the financial year 2019-20 in the case of Individual, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI), and Artificial Juridical Persons (AJP).

The Ordinance has rolled back the enhanced surcharge on capital gains arising on sale of equity shares, units of equity oriented mutual funds, units of business Trust taxed under section 111A or section 112A ('specified security'), in case of individual, HUF, AOP, BOI, AJP (both for resident and non-resident in India) for TDS and advance tax purposes as per Part II and Part III of the First Schedule to the Finance (No.2) Act 2019.

Additionally, the Ordinance has rolled back the enhanced surcharge on advance tax on capital gains arising on sale of all security including derivatives, debt security, debt mutual funds to Foreign Portfolio Investors which are in the category of Association of Persons and Body of Individuals as per section 2(9) of the Finance (No.2) Act 2019. All category of FPIs earning income other than capital gains on which tax is deductible under section 196D and 194LD of the Act should be liable to enhanced surcharge as per section 2(6) of the Finance (No.2) Act 2019.

In case of domestic companies whose income is chargeable to tax under section 115BAA or section 115BAB of the Income-tax Act, the tax computed shall be increased by a surcharge, calculated at the rate of ten per cent of such "advance tax".

**Rate of surcharge for the purpose of TDS and Advance Tax as per First Schedule Part II and III for Individual, HUF, AOP, BOI, AJP (other than FPIs)**

	As per Finance (No.2) Act 2019		As per Ordinance 2019	
	Taxable income (in INR)	Surcharge (%)	Taxable income (in INR)	Surcharge (%)
	<5,000,000	0	<5,000,000	0
I	>5,000,000 up to 10,000,000	10	>5,000,000 up to 10,000,000 (including capital gains on specified securities)	10
II	>10,000,000 up to 20,000,000	15	>10,000,000 up to 20,000,000 (including capital gains on specified securities)	15
III	>20,000,000 up to 50,000,000	25	>20,000,000 up to 50,000,000 (excluding capital gains on specified securities)	25
IV	> 50,000,000	37	> 50,000,000 (excluding capital gains on specified securities)	37
V			> 20,000,000 (including capital gains on specified securities) but is not covered under III and IV above. Provided surcharge not to exceed 15 per cent in case of capital gains on specified securities included in such total income	15

**Rate of surcharge for the purpose of TDS on income other than capital gains under section 2(6) of the Finance (No.2) Act 2019 in case of FPIs**

		As per Finance (No.2) Act 2019
	Taxable income (in INR)	Surcharge (%)
	<5,000,000	0
I	>5,000,000 up to 10,000,000	10
II	>10,000,000 up to 20,000,000	15
III	>20,000,000 up to 50,000,000	25
IV	> 50,000,000	37

**Rate of surcharge for the purpose of advance tax under section 2(9) of the Finance (No.2) Act 2019 in case of AOP and BOI FPIs**

		As per Finance (No.2) Act 2019	As per Ordinance 2019	
	Taxable income (in INR)	Surcharge (%)	Taxable income (in INR)	Surcharge (%)
	<5,000,000	0	<5,000,000	0
I	>5,000,000 up to 10,000,000	10	>5,000,000 up to 10,000,000 (including capital gains on all securities)	10
II	>10,000,000 up to 20,000,000	15	>10,000,000 up to 20,000,000 (including capital gains on all securities)	15
III	>20,000,000 up to 50,000,000	25	>20,000,000 up to 50,000,000 (excluding capital gains on all securities)	25
IV	> 50,000,000	37	> 50,000,000 (excluding capital gains on all securities)	37
V			> 20,000,000 (including capital gains on all securities) but is not covered under III and IV above. Provided surcharge not to exceed 15 per cent in case of capital gains on all securities included in such total income	15



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