

## Tax Alert | Delivering clarity

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### The Taxation Laws (Amendment) Act, 2019 enacted on 12 December 2019

The Taxation Laws (Amendment) Act, 2019 enacted to lower corporate tax rates in India

#### Background

Economic developments after the enactment of the Finance (No. 2) Act, 2019 (Finance Act) along with reduction of rate of corporate income tax by many countries world over necessitated the provision of additional fiscal stimulus to attract investment, generate employment and boost the economy. As these could have been achieved through an amendment to the Income-tax Act, 1961 (IT Act) or to the Finance Act and the Parliament was not in session, it was done through promulgation of The Taxation Laws (Amendment) Ordinance 2019 (the Ordinance) on 20 September, 2019.

Salient features of the amendments made by the Ordinance can be accessed from the link given below:

[https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Global%20Business%20Tax%20Alert/Deloitte%20Tax%20Alert%20-%20Glimpses%20of%20-%20The%20Taxation%20Laws%20\(Amendment\)%20Ordinance,%202019%20-%20new.pdf](https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Global%20Business%20Tax%20Alert/Deloitte%20Tax%20Alert%20-%20Glimpses%20of%20-%20The%20Taxation%20Laws%20(Amendment)%20Ordinance,%202019%20-%20new.pdf)

The Central Board of Direct Taxes (CBDT) *vide* Circular No. 29 of 2019 dated 2 October, 2019 issued clarification with respect to brought forward unabsorbed losses relating to additional depreciation and Minimum Alternate Tax (MAT) credit where a company exercises an option to lower rate of tax.

The Union Cabinet on 20 November 2019 approved the proposal for introducing the Taxation Laws (Amendment) Bill, 2019 in order to replace the Ordinance, 2019. Accordingly, on 25 November 2019, the Taxation Laws (Amendment) Bill, 2019 (Bill) was introduced in the Lok Sabha (Lower House of Parliament) which passed the same on 2 December 2019. On 5 December 2019, the Bill was passed by the Rajya Sabha (Upper House of Parliament), post which the Bill received the assent of the President of India on 12 December 2019.

#### Amendments to the Ordinance 2019

The Taxation Laws (Amendment) Act, 2019 has enacted the provisions of the Ordinance 2019 subject to certain changes.

The key changes made to the provisions in the Ordinance 2019 by the Taxation Law (Amendment) Act 2019, are as under:

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

- Any domestic company which opts for not availing specified incentives, shall be eligible to a reduced income-tax rate of 22 percent. However, where such company fails to satisfy the conditions specified in the section in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years.

- The Amendment Bill has introduced additional conditions to be fulfilled in order to avail the reduced tax rate, i.e. computation of total income without set-off of the following attributable to any of the deductions referred to in section 115BAA(2)(i):
  - Any depreciation from any earlier assessment year;
  - Any loss or allowance for unabsorbed depreciation deemed so under section 72A (i.e. in case of amalgamation or demerger, etc.)
- Where the domestic company opts for the provisions under section 115BAA beginning the assessment year 2020-21, the opening block of fixed assets as on 1 April 2019 shall be adjusted with unabsorbed depreciation allowance in a manner to be prescribed.
- A unit in the International Financial Services Centre (IFSC) opting for the lower rate under this section can claim deduction under section 80LA, subject to meeting the conditions of the said section.
- Where the option exercised under section 115BAB by a newly set-up manufacturing domestic company is rendered invalid due to violation of specified conditions, then such a company may exercise option under section 115BAA.

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

- Following tax rates have been prescribed for the types of income derived by qualifying new manufacturing domestic companies:

Conditions	Income Tax Rate
1. Income which has not been derived from or is incidental to manufacturing or production of an article or thing, , and where no specific rate of tax is provided	22% (on gross basis)
2. Income in the form of short-term capital gains from transfer of capital asset on which depreciation is not allowed	22%
3. The amount in profits in excess of arm's length price pertaining to the transaction between the company and other person with whom there is a close connection. Also, such transaction will be covered within the definition of Specified Domestic transaction under section 92BA.	30%
4. Note: The Rates provided above will be increased by applicable surcharge @ 10% on tax rate and cess @ 4% on tax plus surcharge.	

- Where the new manufacturing domestic company fails to satisfy the conditions specified in the section in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply as if the option had not been exercised for the assessment year and subsequent assessment years.
- The Act has clarified that business of manufacture or production of any article or thing for the purpose of section 115BAB shall not include the following business:
  - Development of Computer Software in any form or in any media;
  - Mining;
  - Conversion of marble blocks or similar items into slabs;

- Bottling of gas into cylinder;
  - Printing of books or production of cinematograph films; or
  - And any other business as may be notified by the central government in this behalf.
- The option for availing the lower tax rate of 15 percent under this section shall remain valid in case of the amalgamated company, only if it continues to satisfy the conditions contained in section 115BAB(2) relating to application for the lower rate.
  - The CBDT may issue guidelines for the purpose of removing difficulties faced in complying with the conditions laid down for qualification under this section relating to use of plant and machinery and to promote manufacturing or production of article or thing using new plant and machinery. Every such guideline shall be placed before each House of the Parliament and shall be binding on the person and income-tax authorities subordinate to it.

**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 for the previous year relevant to the assessment year 2020-21 onwards.

**Provisions relating to MAT credit (Section 115JAA):**

- Provisions relating to MAT credit shall not apply to a person exercising the option under section 115BAA.

**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 made a public announcement for buy back of listed shares on or 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.

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

- Surcharge of 10 percent to apply to income from capital gains in case of domestic companies whose income is chargeable to tax under section 115BAA and 115BAB.
- Individual and every Artificial Juridical Person (AJP) having income under section 115AD also entitled to rollback of enhanced surcharge.
- 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 Taxation Law (Amendment) Act 2019	
	Taxable income (in INR)	Surcharge (%)	Taxable income (in INR)	Surcharge (%)
	< 5,000,000	0	< 5,000,000	0

<b>I</b>	>5,000,000 up to 10,000,000	10	>5,000,000 up to 10,000,000 (including capital gains on specified securities)	10
<b>II</b>	>10,000,000 up to 20,000,000	15	>10,000,000 up to 20,000,000 (including capital gains on specified securities)	15
<b>III</b>	>20,000,000 up to 50,000,000	25	>20,000,000 up to 50,000,000 (excluding capital gains on specified securities)	25
<b>IV</b>	> 50,000,000	37	> 50,000,000 (excluding capital gains on specified securities)	37
<b>V</b>			> 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
	<b>Taxable income (in INR)</b>	<b>Surcharge (%)</b>
	< 5,000,000	0
<b>I</b>	>5,000,000 up to 10,000,000	10

<b>II</b>	>10,000,000 up to 20,000,000	15
<b>III</b>	>20,000,000 up to 50,000,000	25
<b>IV</b>	> 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 Individual, AOP, BOI or AJP FPIs

As per Finance (No.2) Act 2019		As per Taxation Law (Amendment) Act 2019		
	<b>Taxable income (in INR)</b>	<b>Surcharge (%)</b>	<b>Taxable income (in INR)</b>	<b>Surcharge (%)</b>
	< 5,000,000	0	< 5,000,000	0
<b>I</b>	>5,000,000 up to 10,000,000	10	>5,000,000 up to 10,000,000 (including capital gains on all securities)	10
<b>II</b>	>10,000,000 up to 20,000,000	15	>10,000,000 up to 20,000,000 (including capital gains on all securities)	15
<b>III</b>	>20,000,000 up to 50,000,000	25	>20,000,000 up to 50,000,000 (excluding capital gains on all securities)	25
<b>IV</b>	> 50,000,000	37	> 50,000,000 (excluding capital gains on all securities)	37
<b>V</b>			> 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

## **Observations**

The enactment of The Taxation Laws (Amendment) Bill, 2019 in Parliament, which replaces the Tax Ordinance promulgated by the President in September 2019, is expected to bring certainty among corporate taxpayers and FPIs with respect to applicability of lower tax rates and roll back of enhanced surcharge respectively. The reduced corporate tax rates has included India in the countries with competitive tax rates, which should help improve the ease of doing business in India and attract more investments into the economy.



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