



India Taxation Laws (Amendment) Ordinance, 2019

Dbriefs Special Edition – India Spotlight

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Agenda

- Introduction
- New schemes
- Points to be considered for impact analysis
- Alternative structures
- Way forward
- Questions and answers

Introduction

Corporate tax and MAT changes

- **New schemes announced**

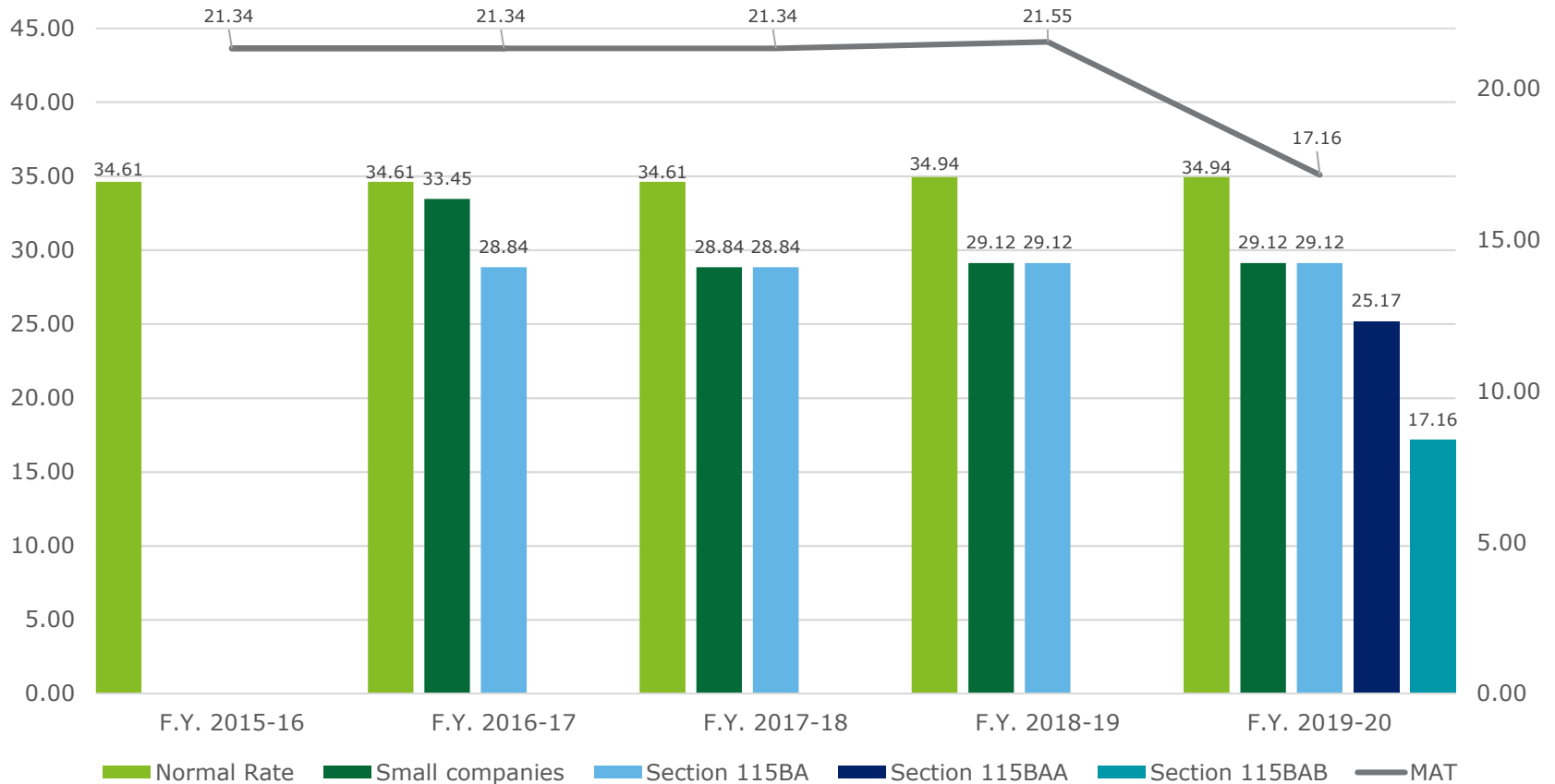
- Scheme 1 – existing domestic companies have option for reduced corporate tax rate of 22 per cent without Minimum Alternate Tax (MAT), subject to not claiming certain incentives and exemption
- Scheme 2 – new manufacturing companies set up and registered on or after 1 October 2019, have option for lower rate of tax of 15 per cent without MAT, subject to not claiming certain incentives and exemption

- **Change in current regime**

- Beginning from Financial Year (FY) 2019-20, MAT is reduced from existing 18.5 to 15 per cent
- Companies which do not opt for the concessional tax regime and avail the tax exemptions/incentives shall continue to pay tax at the pre-amended rate of 30 per cent. These companies may opt for the concessional tax regime after expiry of their tax holiday/exemption period

* The above tax rates are exclusive of surcharge and education cess

Corporate tax reset



- In case a company opts for section 115BAA or section 115BAB, MAT would not be applicable

Other changes announced

- **Capital gains**

- Enhanced surcharge introduced by the Finance (No.2) Act, 2019 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 individuals, association of persons and certain other categories of non-corporate persons
- The enhanced surcharge shall also not apply to capital gains arising on sale of any security including derivatives, in the hands of Foreign Portfolio Investors (FPIs)

- **Other announcements**

- Relief from buyback tax has been provided to listed companies which have already made a public announcement of buy-back before 5 July 2019
- The Government has also announced an increased scope for Corporate Social Responsibility (CSR) activities

Polling question 1

Does your company view this corporate tax reset as materially (positive) impacting your Effective Tax Rate in India?

- Yes, immediately
- Yes, in the long run
- No
- Not applicable (e.g., if no current operations in India)

New schemes

Concessional tax rate for certain domestic companies

Section 115BAA

- Domestic company can opt for a lower rate of tax of 22 per cent plus 10 per cent surcharge and 4 per cent education cess, aggregating to 25.17 per cent for FY 2019-20 onwards, subject to the total income of the company being computed without claiming certain specified incentives/deductions, for instance
 - Tax holiday for SEZ units
 - Additional depreciation
 - Expenditure on scientific research
 - Chapter VI-A deductions under heading C (excluding 80JJAA), for instance, deduction in respect of
 - Profits and gains from industrial undertakings or enterprises engaged in infrastructure development etc.
 - Income of an eligible start-up
 - Certain incomes from offshore banking units and international finance centre
 - Without set-off of any loss carried forward from any earlier FY if such loss is attributable to any of the above deductions/incentive.
- Only normal depreciation can be claimed. The rates will be prescribed
- Option to be exercised on or before due date of filing the tax return. Option once exercised, cannot be subsequently withdrawn for the same or any other tax year

Concessional tax rate for new domestic manufacturing companies Section 115BAB

- New domestic manufacturing company can opt for a lower rate of tax of 15 per cent plus 10 per cent surcharge and 4 per cent education cess, aggregating to 17.16 per cent for FY 2019-20 onwards, subject to the fulfillment of following conditions
 - Conditions similar to section 115BAA apply. Additionally
 - Company should be set-up and registered on after 1 October 2019 and commence manufacturing on or before 31 March 2023
 - It should not be formed by splitting up or reconstruction of business already in existence
 - It should not use any machinery or plant previously used for any purpose. Threshold of 20 per cent of the total cost permitted
 - It should not be engaged in any business other than manufacturing or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it
 - Transactions carried on by the company will be subject to domestic transfer pricing provisions. If it appears to an Assessing Officer (AO) that business between the company and another person is so arranged that it results in more than ordinary profits to such company, the AO may, applying the arm's length price, re-determine the profits

Corporate tax rates

| Type of company | Income up to INR 10 million | | Above INR 10 million up to INR 100 million | | Above INR 100 million | |
|---|-----------------------------|--------------------------|--|--------------------------|-----------------------------|--------------------------|
| | Effective tax rate (normal) | Effective tax rate (MAT) | Effective tax rate (normal) | Effective tax rate (MAT) | Effective tax rate (normal) | Effective tax rate (MAT) |
| Domestic company with turnover up to INR 4,000 million in FY 2017-18 | 26% ¹ | 15.60% ¹ | 27.82% ¹ | 16.69% ¹ | 29.12% ¹ | 17.47% ¹ |
| Section 115BAA – domestic company without tax incentives | 25.17% ² | NIL | 25.17% ² | NIL | 25.17% ² | NIL |
| Section 115BAB – new domestic manufacturing company | 17.16% ² | NIL | 17.16% ² | NIL | 17.16% ² | NIL |
| Other domestic company | 31.20% ¹ | 15.60% ¹ | 33.38% ¹ | 16.69% ¹ | 34.94% ¹ | 17.47% ¹ |
| Foreign company | 41.60% ³ | 15.60% ³ | 42.43% ³ | 15.91% ³ | 43.68% ³ | 16.38% ³ |

¹ Includes surcharge at the rate of 7% in case of income from INR 10 million up to INR 100 million and 12% in case of income above INR 100 million

² Includes standard surcharge at the rate of 10%

³ Includes surcharge at the rate of 2% in case of income from INR 10 million up to INR 100 million and 5% in case of income above INR 100 million. Further all the above rates are further increased by education cess of 4%

Points to be considered for impact analysis

Carry forward and set-off of MAT credit

- Section 115JB dealing with levy of MAT is amended to provide an exclusion for company who has exercised option to be governed by section 115BAA and section 115BAB
- Resultantly, companies opting for the new scheme of taxation will fall outside the scope of section 115JB
- Whether such companies will be allowed to carry forward and set off the MAT credit?
- Potential interpretation
 - Carry forward and set off of MAT credit not available
 - Carry forward and set off of MAT credit should be available to the extent of difference between tax payable and the MAT
 - MAT credit should be available against the entire tax liability

CBDT has vide Circular No. 29/2019, dated 2 October 2019 clarified that person opting for section 115BAA will not be eligible to claim set off of brought forward MAT credit.

Polling question 2

In case you propose to opt for any of the new regimes, does your company have significant MAT credit brought forward?

- Yes
- No
- Not applicable as we do not propose to opt into the new regime

Meaning of manufacturing and production

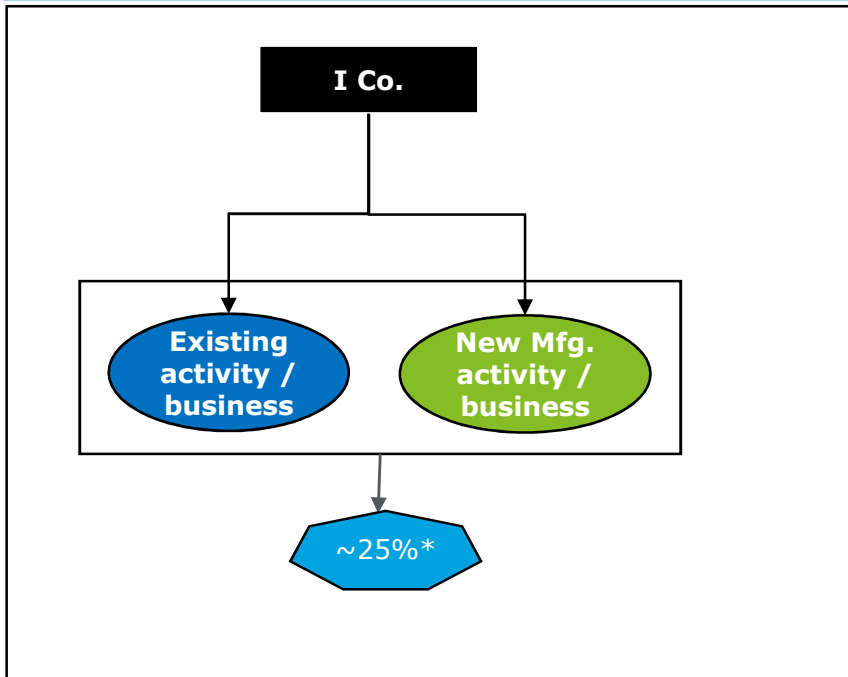
- General meaning of the terms “manufacturing” and “production”
- Computer software
- Information technology enabled services
- Generation of power

- Section 2(29BA): "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing
 - a) Resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character, and use
 - b) Bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure

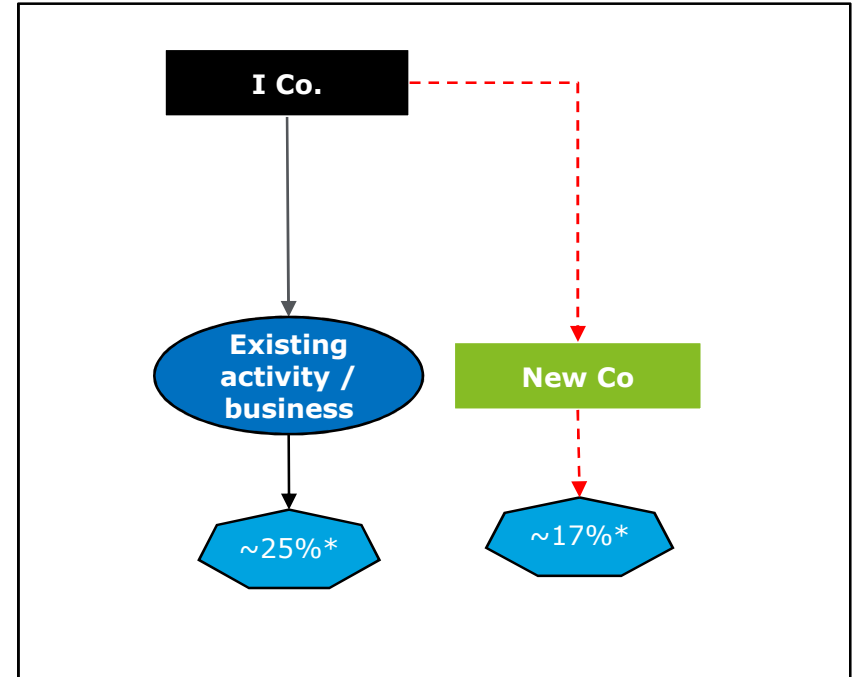
Alternative structures

Expansion through newly incorporated company

Structure



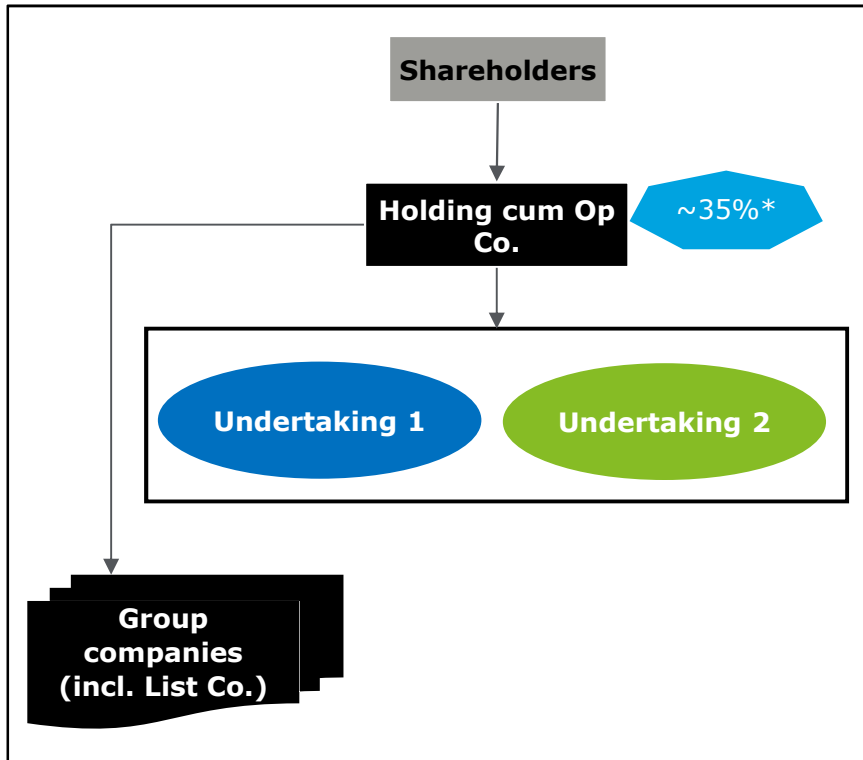
Alternative structure



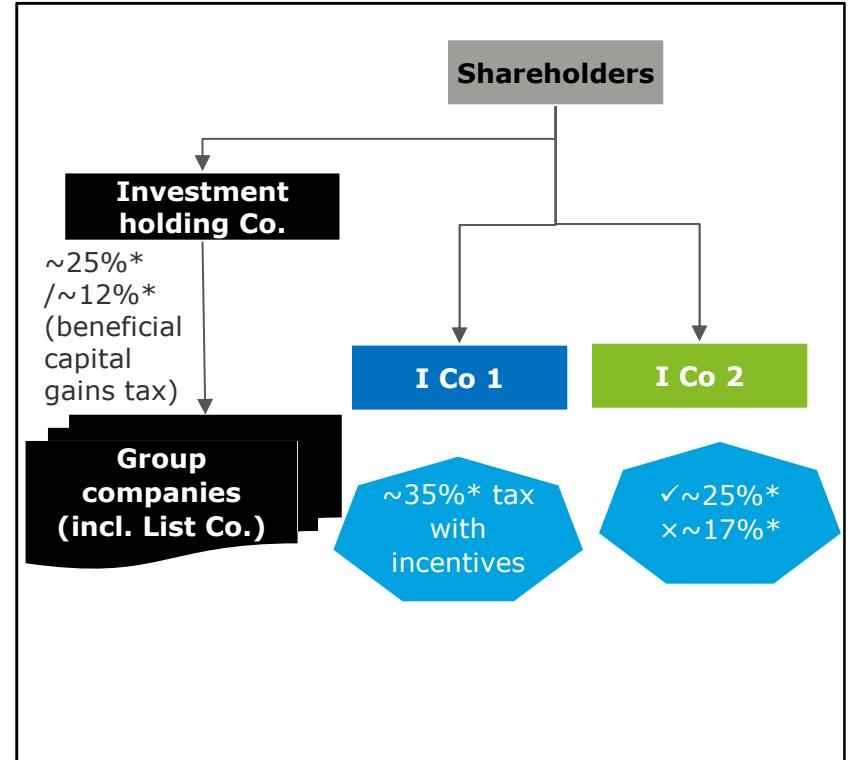
*Including surcharge and cess

Segregation of businesses

Structure



Alternative structure



*Including surcharge and cess

Way forward

Way forward

- Comparative analysis for existing and new regime
- In case of companies claiming tax holiday to evaluate the benefit (could be based on projections/simulation)
 - Duration and nature of deduction claimed
 - Period of holiday
 - MAT credit, brought forward tax loss, and book loss
 - Inter-play between losses from incentives and other divisions
 - Impact of deferred tax asset/liability
- Cash outflow vis-à-vis P/L impact

Polling question 3

Are the changes we described going to accelerate manufacturing investment into India?

- Yes, will certainly consider India for new investments
- Yes, however tax is only one of the drivers for our decision
- No, Indian regime needs more structural reforms before they are competitive with other countries
- No, we are not considering India currently

Questions and answers

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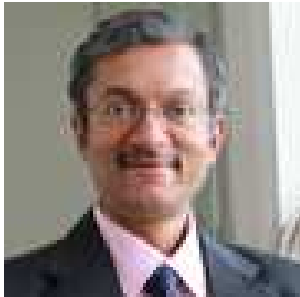
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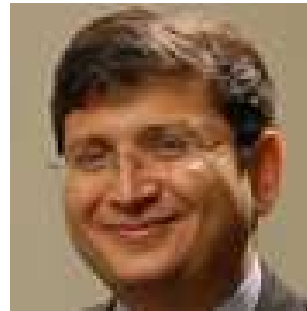
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