

The Taxation Laws (Amendment) Ordinance 2019

September 23, 2019

INTRODUCTION

The Finance Minister, Nirmala Sitharaman addressed a press conference¹ in Panaji, Goa on September 20, 2019 and announced several fiscal measures to promote growth and investment in the country. The Government of India has brought in the Taxation Laws (Amendment) Ordinance, 2019² to make relevant amendments to the Income-tax Act, 1961 and the Finance (No. 2) Act, 2019. Key highlights of taxation laws (amendment) ordinance promulgated by Hon. President of India are as follows:

1. *Reduced tax rate applicable to certain domestic companies*

Ordinance inserts Sec 115BAA for providing lower rate of tax at 22% (plus applicable surcharge and cess) to certain domestic companies other than those mentioned in Sec 115BA and 115BAB.

Conditions for availing beneficial rates are as under:

Total income is computed without claiming following deductions:

- Sec 35 (1)(ii), (ia), (iii) and Sec 35(2AA), (2AB) – certain scientific research expenditure
 - Sec 35AD
 - Sec 35CCC – Expenditure on agricultural extension project
 - Sec 35CCD – Expenditure on skill development project
 - Deduction under Part C of Chapter VIA other than Sec 80JJAA (deduction in respect of employment of new employees)
- without set off of any loss carried forward from earlier year if such loss is attributable to any of the deduction mentioned above. However, it would be deemed that full effect of the loss has
 - without claiming the following deductions/exemptions:
 - Sec10AA relating to SEZ
 - Additional depreciation allowance under Sec 32(1)(ia)
 - Sec 32AD – Deduction for investment in new plant and machinery in notified backward states
 - Sec 33AB- Tea/Coffee/rubber development allowance
 - Sec 33ABA – Site restoration fund
 - already been given and no further deduction would be allowed for such loss in future.
 - by claiming depreciation u/s 32 other than under Sec 32(a)(ia) as may be prescribed.
- The assessee company needs to exercise option to avail concessional rate in prescribed manner before due date for filing return u/s 139(1) for AY 2020-21. Once such option is exercised, it would be applicable for subsequent AY and it cannot be withdrawn.

2. Reduced tax rate for certain manufacturing companies

In order to attract fresh investment in manufacturing sector and to provide boost to Govt. initiative towards 'Make-in-India', the Ordinance inserts Sec 115BAB to provide for tax rate of 15% (plus applicable surcharge and cess) for domestic manufacturing companies other than those covered in Sec 115BA and 115BAA.

The conditions applicable for availing the concessional tax rate are as under:

(i) Company has been set up and registered on or after October 1, 2019 and has commenced manufacturing on or before March 31, 2023; and It should not be formed by splitting up, reconstruction of business already in existence or it should not use machinery or part previously used for any purpose or does not use any building previously used as a hotel or a convention centre as the case may be.

(ii) The 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 distribution of, such article or thing manufactured or produced by it

(iii) Total of income of such company should be computed

- without claiming deduction under the following provisions –
 - Sec10AA relating to SEZ
 - Additional depreciation allowance under Sec 32(1)(ia)
 - Sec 32AD – Deduction for investment in new plant and machinery in notified backward states
 - Sec 33AB- Tea/Coffee/rubber development allowance
 - Sec 33ABA – Site restoration fund

- Sec 35 (1)(ii), (ia), (iii) and Sec 35(2AA), (2AB) – certain scientific research expenditure
- Sec 35AD -
- Sec35CCC – Expenditure on agricultural extension project
- Sec 35CCD – Expenditure on skill development project
- Deduction under Part C of Chapter VIA other than Sec 80JJAA (deduction in respect of employment of new employees).

- without set off of any loss carried forward from earlier year if such loss is attributable to any of the deduction mentioned above. However, it would be deemed that full effect of the loss has already been given and no further deduction would be allowed for such loss in future.
- by claiming depreciation u/s 32 other than under Sec 32(a)(ia) determined in such a manner as may be prescribed.

Provision similar to Sec 80IA(10) is made applicable vide sub-section (4) for transaction between connected parties which has the effect of producing more than ordinary profit which might expected to arise. Further domestic transfer pricing provisions u/s 92BA are made applicable to such transactions.

The assessee company needs to exercise option to avail concessional rate in prescribed manner before due date for filing return u/s 139(1) for the assessment year for which it needs to file first return (which should be AY 2020-21 or a subsequent AY). Once such option is exercised, it would be applicable for subsequent AY and it cannot be withdrawn.

3. Amendments to Sec 115BA

Corresponding amendments are made to Sec 115BA to provide that it would apply to companies other than those mentioned in Sec 115BAA and 115BAB and also to provide that

where the person exercises option u/s 115BAB, the option under this section may be withdrawn.

Ordinance amends Sec 115BA w.e.f. April 1, 2020. The amended section would apply to certain domestic manufacturing companies. Prior to amendment the provisions of this section were applicable to certain domestic companies and tax rate was applicable at 25%. Amended section provides for tax rate of Amendment to Sec 92BA (specified domestic transactions).

The ordinance amends definition of specified domestic transaction u/s 92BA to include – “Any business transacted between the persons referred in Sec 115BAB(4)”.

This amendment is effective from April 1, 2020.

4. Amendments to Sec 115JB (MAT)

The ordinance amends Sec 115JB(1) to reduce MAT rate from 18.5% to 15%.

Further, sub-section (5A) is amended to provide that MAT provisions would not apply to person who has exercised option u/s 115BAA or Sec 115BAB.

5. Amendment to Sec 115QA- Buy back tax

The Ordinance adds proviso to Sec 115QA(1) to exclude its applicability of this provision to buy back of shares of listed companies where the public announcement has been made before July 5, 2019 in accordance with the provisions of SEBI (buy Back of Securities) Regulations 2018.

WITHDRAWAL OF ENHANCED SURCHARGE

The press release also states that in order to stabilise the flow of funds into the capital market, it has been provided that enhanced surcharge introduced by the Finance (No.2) Act, 2019 shall not apply to 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 individuals, HUF, AOP, BOI and AJP.

Further, 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).

GOVERNMENT EXPANDS SCOPE OF SPENDING OF CSR FUNDING; NOW CSR CAN BE SPENT ON GOVERNMENT AIDED RESEARCH INSTITUTES, IITS, ETC.

The Government has also decided to expand the scope of the spending of 2% of CSR. The CSR fund of 2% can now be spent on incubators funded by the Central or the State Government or any agency or public sector undertaking of Central or State Government making contribution to public funded universities, IITs, National laboratories and Autonomous Bodies (established under the auspices of 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 National labs, IITs, established under CSIR, ICMR, DRDO, DAE, etc., engaged in conducting research in science, medicine, Information Technology.