

CNK & Associates LLP

The Taxation Laws (Amendment) Ordinance, 2019 – An Insight

In Brief

The Taxation Laws (Amendment) Ordinance, 2019 ('the Ordinance') has been promulgated with the objective of revitalizing the economy. The Ordinance gives the company taxpayers an option to be taxed at a lower rate. Further, it also clarifies the non-applicability of the enhanced surcharge to certain income earned by taxpayers. This move, along with the abolishment of MAT for certain company taxpayers along with reduction of the rate of MAT for other companies, is a welcome move. Further, one hopes that by reducing the tax rate for companies whilst keeping the tax rate on individuals intact, there would be an increase in manufacturing and trading activity in the country, in line with the desired objective of Make-in-India.

Introduction

In order to provide a much-needed impetus to the economy, some key tax amendments were announced by the Hon'ble Finance Minister on September 20, 2019 and promulgated through the Taxation Laws (Amendment) Ordinance, 2019. The amendments include reduction in corporate tax rate as well as deletion of the additional surcharge introduced by the recent Finance Act (No.2), 2019 on certain incomes and taxpayers. The amendment vide the Ordinance would be effective from FY 2019-20. This note lists the key tax amendments as provided in the Ordinance as well as CNK insights on the same.

Reduction of tax rates for existing companies

Introduction of section 115BAA

Pre-amendment, income of companies, having annual turnover below INR 4,000 mn in FY 2017-18 or eligible for taxation under section 115BA, was taxable at the rate of 25% (plus applicable surcharge and education cess). Income of other companies was taxed at the rate of 30% (plus applicable surcharge and education cess). After the promulgation of the Ordinance an option of a lower rate of tax of 22% (plus applicable surcharge and education cess) is available to domestic companies provided the following deductions are not claimed:

- a. Section 10AA – Deduction for units established in SEZs.
- b. Section 32(1)(iia) – Allowance for additional depreciation.
- c. Section 32AD – Deduction for investment allowance in certain notified backward areas.
- d. Section 33AB – Deduction for taxpayers in business of tea development, coffee development and rubber development.
- e. Section 33ABA – Deduction for deposit with Site Restoration Fund.
- f. Sections 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA) and 35(2AB) – Deduction for expenditure on Research and Development.
- g. Section 35AD – Deduction for expenditure on certain specified businesses.

- h. Sections 35CCC and 35CCD – Deduction for expenditure on agricultural extension and skill development projects.
- i. Chapter VI – A deductions in respect of certain incomes such as income from business situated in SEZ or in specified areas, etc. However, deduction under section 80JJAA in respect of payment to employees shall be allowed.

Further, any past losses incurred on account of the above deductions shall not be allowed to be set-off and shall be deemed to have lapsed.

Under this option, the surcharge would be 10% as against the existing 7% and 12% for domestic companies. This option would need to be specifically exercised by the taxpayer in a manner to be prescribed. Once this option has been exercised, the taxpayer would not be able to opt out.

CNK Comments:

This would be beneficial to all company taxpayers as companies would be allowed to opt in to be taxed under this section at any time. One may be able to argue that past tax losses which are not in relation to the above deductions are available for set off against income taxed under the new provisions. The comparison of the tax rates applicable to the domestic companies is provided in the Table on the next page. Given the restriction to opt out of the taxation under this section once opted in, existing company taxpayers would need to evaluate as to whether the option of lower tax rate without the above deductions is beneficial as compared to the pre-amended tax rate after considering the above deductions taking into account the future profits and deductions to be claimed.

Tax rates for new companies

Introduction of section 115BAB

New domestic companies engaged in the business of manufacture and research or distribution of the article manufactured are eligible for a lower rate of tax at the rate of 15% (plus applicable surcharge and education cess) at the option of the taxpayer provided the following conditions are satisfied:

- a. The company has been set-up and registered on or after October 1, 2019 and has commenced manufacturing on or before March 31, 2023
- b. The company is not formed by splitting up or reconstruction of a business already in existence and does not use any machinery or plant used for any purpose
- c. The company does not claim deductions specified in section 115BAA above
- d. The company does not set-off any past tax losses in respect of the above deductions

Further, the transaction between such company and any other closely connected person shall be subject to the provisions of Domestic Transfer Pricing. As with section 115BAA, the option once exercised cannot be withdrawn by the taxpayer. Accordingly, a new company eligible to claim the lower rate of tax, would need to evaluate as to the benefit, if any, available under this section, having regard to the deductions foregone for claiming the lower rate of tax.

Abolishment / Reduction of rate of MAT under section 115JB

Currently, section 115JB prescribes a MAT rate of 18.5% (plus applicable surcharge and education cess). After the promulgation of the Ordinance, the taxpayers who opt for the lower rate of corporate tax rate as above would not be subject to MAT. Further, in respect of companies which do not opt for the lower rate of corporate tax as above, the rate of MAT has been reduced to 15% (plus applicable surcharge and education cess).

CNK Comments:

The abolishment/ reduction of MAT would benefit all the company taxpayers. The question arises as to whether a company which has opted for taxation under section 115BAA or section 115BAB and accordingly not liable to MAT, would be able to claim MAT credit in respect of the past years.

Comparison of tax rates applicable to companies

Particulars	Company A*	Company B*	Company C*	Company D	New Company E
Whether opted for deduction under section 115BAA	×	×	×	✓	×
Whether opted for deduction under section 115BAB	×	×	×	×	✓
Profit Before Tax	100.00	100.00	100.00	100.00	100.00
Tax Rate	30.00%	25.00%	25.00%	22.00%	15.00%
Add: Surcharge	3.60%	3.00%	3.00%	2.20%	1.50%
Add: Cess	1.34%	1.12%	1.12%	0.97%	0.66%
Effective Tax Rate	34.94%	29.12%	29.12%	25.17%	17.16%
Profit After Tax	65.06	70.88	70.88	74.83	82.84
MAT Rate applicable (exclusive of surcharge and education cess)	15%	15%	15%	NA	NA
Deductions Available					
i. Deductions under Chapter VI A	✓	✓	×	×	×
ii. Deductions u/s 10AA	✓	✓	×	×	×
iii. Deductions u/s 32(1)(iia), 32AC, 32AD	✓	✓	×	×	×
iv. Deductions u/s 33AB,33ABA	✓	✓	×	×	×
v. Deductions u/s 35, 35AC, 35AD, 35CCC, 35CCD	✓	✓	×	×	×
Availability of Set off of Losses on account of above deductions	✓	✓	×	×	×

* Company A – Turnover exceeds INR 4,000 mn in FY 2017-18

Company B – Turnover does not exceed INR 4,000 mn in FY 2017-18

Company C – Taxed under section 115BA

Enhanced surcharge on certain income

The Finance Act (No. 2), 2019 had enhanced the levy of surcharge on income-tax in case of an individual, Hindu Undivided Family (HUF), Association of Persons (AOP) [which also includes Trusts], Body of Individuals (BOI) and Artificial Juridical Person (AJP) with taxable income above INR 20 mn as under:

Income range	Rate of surcharge
INR 20 mn to INR 50 mn	Increased from 15% to 25%
Above INR 50 mn	Increased from 15% to 37%

The effective tax rates of large domestic and foreign investors in Indian capital markets increased significantly and negatively impacted the flow of investments into India. With a view to stabilise the flow of funds into the capital markets, it has now been provided through the Ordinance that the enhanced surcharge shall not apply on:

- a. Capital gains of an individual, HUF, AOP, BOI and AJP from transfer of:
 - equity share in a company; or
 - a unit of an equity-oriented fund; or
 - a unit of a business trust,which is liable for securities transaction tax (STT)
- b. Capital gains of Foreign Portfolio Investors (FPIs) registered as AOP or BOI, from transfer of any security (including derivatives)

CNK Comments:

Short-term and long-term capital gains from the above-mentioned securities, which are covered by sections 111A and 112A, will not be subject to levy of enhanced surcharge. In other words, the highest rate of surcharge on such capital gains will be restricted to 15%, as was the position prior to Finance Act (No. 2), 2019.

There is a technical defect in drafting the Ordinance which implies that Individuals registered as FPIs will not be subject to any surcharge on their FPI income for purpose of computing advance tax for FY 2019-20. However, this appears to be an inadvertent error which may be clarified in due course.

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