



# **NEWSFLASH - KEY HIGHLIGHTS OF TAXATION LAWS (AMENDMENT) ORDINANCE 2019**

**20 September 2019**

# Background

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The Government has brought in the Taxation Laws (Amendment) Ordinance 2019 ('Taxation Ordinance') to make certain amendments in the Income-tax Act 1961 and the Finance (No. 2) Act 2019.

The purpose of this Newsflash is to provide an overview of the Significant Highlights of the Taxation Ordinance.

# Overview of Taxation Reliefs – Post 2015

Budget  
2015

- Announced plans to reduce the corporate tax rate from 30% to 25% in a phased manner

Budget  
2016

- Reduced tax rate of 25% for new manufacturing domestic companies (*incorporated on or after 1 March 2016*) subject to certain conditions

Budget  
2017

- Reduce tax rate of domestic company with annual turnover or gross receipts not exceeding Rs. 50 crores in FY 2015-16 at 25%

Budget  
2018

- Further relief to companies by reducing the tax rate to 25% for FY 2018-19, if the annual turnover was up to Rs. 250 Crores for Financial Year ending 31 March 2017

Budget  
2019

- Tax rates for the companies having total turnover or gross receipts up to Rs. 400 Crores in FY 2017-18 reduced to 25%.

# Significant Taxation Relief – Taxation Law Amendment Ordinance 2019

Ordinance  
2019

- Tax rates for the companies for FY 2019-20 **reduced to 22%** (plus surcharge & cess) & **no MAT applicable** (provided no exemption availed).
- For new Mfg co set up on or after 1 October 2019 & Operational before 31st March 2023, **tax rate of 15%** (effective rate of 17.16% applicable)
- For Companies availing exemption, the tax rate pre-amendment shall continue & MAT shall be at reduced rate of 15% (plus applicable surcharge & cess)

# Key Highlights - Reduced tax rate of 22% Applicable to Certain Domestic Companies – Section 115BAA

## Corporate Tax Rate Slashed

- Taxation Ordinance inserted Sec 115BAA in the Income Tax Act ('IT Act') 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.
- In effect, there is a reduction in the base rate of corporate tax to 22% (effective maximum tax rate 25.17%) for Financial Year 2019-20 subject to condition that such companies will not avail any deduction.
- The current base tax rate (excluding surcharge and cess) is 30% (effective maximum tax rate 34.944%) for companies having turnover exceeding Rs.400 crores and 25% (effective maximum tax rate 29.12%) for companies having turnover up to Rs.400 crores.
- It is notable that companies which want to avail of exemptions (such as section 10AA of the Income-tax Act, 1961), shall be subject to pre-amendment tax rates.

# Key Highlights - Reduced tax rate of 22% Applicable to Certain Domestic Companies – Section 115BAA

## MAT Abolished for Domestic Companies not Availing Tax Exemptions

- Further, Minimum Alternative Tax (MAT) provisions shall not be applicable with respect to companies availing the lower rate of tax @ 22%.
- It may be pointed out that MAT is currently applicable @ 18.5% (excluding surcharge and cess) on book profits computed in specified manner.
- It is notable that companies which want to avail of deductions (such as section 10AA / Profit linked deductions under chapter VI A, etc), shall be subject to reduced MAT at 15% (plus applicable surcharge and cess).

# Key Highlights - Reduced tax rate of 22% Applicable to Certain Domestic Companies – Section 115BAA

## No Deduction is claimed under the following sections:

- Section 10AA (deduction for exports by SEZ units)
- Section 32(1)(iia) - Additional Depreciation allowance
- Section 32AD – Deduction for investment in new plant and machinery in notified backward states
- Section 33AB- Tea/Coffee/Rubber Development allowance
- Section 33ABA – Site restoration fund
- Section 35AD – Deduction in respect of specified business
- Section 35 (1)(ii), (iia), (iii) and Sec 35(2AA), (2AB) – Certain scientific research expenditure
- Section 35CCC – Expenditure on agricultural extension project
- Section 35CCD – Expenditure on skill development project
- Deduction under Part C of Chapter VIA other than section 80JJAA (deduction in respect of employment of new employees)

Note: No set off of any loss carried forward from earlier year shall be allowed, if such loss is attributable to any of the deduction mentioned above. The said carried forward losses would be deemed to have already been given full effect to and no further deduction would be allowed for such loss for any subsequent year.

# Key Highlights - Reduced tax rate of 22% Applicable to Certain Domestic Companies – Section 115BAA

## Other Conditions:

### Depreciation allowed (other than additional depreciation u/s 32(a)(iia):

- Depreciation u/s 32 other than under Sec 32(a)(iia) shall be allowed, determined in such a manner as may be prescribed

### Option to be exercised before due date of filing & once exercised cannot be changed

- The domestic 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.
- Once such option is exercised, it would be applicable for subsequent years as well and cannot be withdrawn.



# Key Highlights - For New Manufacturing Companies, New Base Tax Rate of 15% - Section 115BAB

The Taxation Ordinance inserted section 115BAB in the IT Act to provide for base tax rate of 15% (plus applicable surcharge and cess) for domestic manufacturing companies other than those covered in Sec 115BA and 115BAA. Minimum Alternate Tax (MAT) provisions not applicable.

Company has been set up and registered on or after October 1, 2019 and has commenced manufacturing on or before March 31, 2023

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 (Refer **Note** below)

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

**Note:** Usage of any Machinery or Plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed 20% of the total value of machinery or plant used by the company would be treated as in compliance with the provision. Usage of Imported Plant / Machinery, not previously used in India, is permitted.

# Key Highlights - For New Manufacturing Companies, New Base Tax Rate of 15%.. Contd

## Other Conditions:

### No Deduction is claimed under the following sections:

- Section 10AA (deduction for exports by SEZ units)
- Section 32(1)(iia) - Additional depreciation allowance
- Section 32AD – Deduction for investment in new plant and machinery in notified backward states
- Section 33AB- Tea/Coffee/rubber development allowance
- Section 33ABA – Site restoration fund
- Section 35AD – Deduction in respect of specified business
- Section 35 (1)(ii), (iia), (iii) and Sec 35(2AA), (2AB) – certain scientific research expenditure
- Section 35CCC – Expenditure on agricultural extension project
- Section 35CCD – Expenditure on skill development project
- Deduction under Part C of Chapter VIA other than section 80JJAA (deduction in respect of employment of new employees)

Note: No set off of any loss carried forward from earlier year shall be allowed, if such loss is attributable to any of the deduction mentioned above. The said carried forward losses would be deemed to have already been given full effect to and no further deduction would be allowed for such loss for any subsequent year.

# Key Highlights - For New Manufacturing Companies, New Base Tax Rate of 15%.. Contd

## Other Conditions:

### Depreciation allowed (other than additional depreciation u/s 32(a)(iia):

- Depreciation u/s 32 other than under Sec 32(a)(iia) shall be allowed, determined in such a manner as may be prescribed

### Coverage in Specified Domestic Transaction Provision (Section 92BA)

- Domestic transfer pricing provisions u/s 92BA are made applicable to such transactions between connected parties which has the effect of producing more than ordinary profit which might expected to arise.

### Option to be exercised before due date of filing & once exercised cannot be changed

- The domestic 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.
- Once such option is exercised, it would be applicable for subsequent years as well and cannot be withdrawn.

# Corresponding Amendments to Section 115BA

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- Provisions of section 115BA amended w.e.f. 1 April 2020 (i.e. Financial Year 2019-20) made applicable to Certain Domestic Manufacturing companies, earlier it was applicable to certain domestic companies (& tax rate was applicable at 25%).
- Amendments made to section 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.

# Amendment to Section 115QA- Buy-Back Tax

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- With respect to the buy-back of shares of listed companies, the provision in the Taxation Laws (Amendment) Ordinance 2019 provides a limited relief from such buy-back tax for listed companies which already had made public announcements of buy-back before 5<sup>th</sup> July 2019, in accordance with the provisions of SEBI (buy Back of Securities) Regulations 2018.
- Notably, there is no withdrawal of the provision of share buyback for listed companies, but it is an interim relief from buyback provided for all buyback which were planned before the budget (5<sup>th</sup> July 2019) and in respect of which public announcements had already been made in compliance with the SEBI regulations as referred above.

# Amendment to Applicability of Surcharge

- Surcharge (25% / 37%) not applicable to Individuals, HUF, AOP, BOI and Artificial Juridical Person on capital gains arising on sale of securities as referred in section 111A / 112A of the IT Act
- Surcharge (25% / 37%) not applicable to FPIs on capital gains arising on sale of any security including derivatives
- For domestic companies covered under newly inserted sections 115BAA / 115BAB, surcharge applicable @ 10%.

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