

TAX FLASH NEWS

25 November 2019

The Taxation Laws (Amendment) Bill, 2019 introduced in Lok Sabha

In September 2019, the Taxation Laws (Amendment) Ordinance, 2019 (the Ordinance) was promulgated by the President of India to make certain amendments in the Income-tax Act 1961 (the Act) and the Finance (No. 2) Act 2019. On 20 November 2019, the Ministry of Finance issued a press release stating that the Union Cabinet has approved the proposal for introducing the Taxation Laws (Amendment) Bill, 2019 (the Bill) in order to replace the Ordinance.

The Taxation Laws (Amendment) Bill, 2019 (the Bill) has been introduced in Lok Sabha. The Bill, when passed will replace the Ordinance issued in September 2019.

Tax concession for domestic companies

The Ordinance introduced a new Section 115BAA with effect from Financial Year (FY) 2019-20 [(Assessment Year (AY) 2020-21] to provide an option for a concessional tax at the rate of 22 per cent in the case of a domestic company subject to certain conditions. The Bill has proposed the following additional conditions in these provisions:

- Where the person fails to satisfy the prescribed conditions in any previous year, the option under these provisions shall become invalid in respect of the Assessment Year (AY) and subsequent AYs. Further, in such a case, other provisions of the Act shall apply, as if the option had not been exercised for the AY relevant to that previous year and subsequent AYs.
- The Bill has proposed that total income of the company is to be computed without set-off of additional depreciation from any earlier AY.

- Further the total income of the company is to be computed without set-off of any loss or allowance for unabsorbed depreciation deemed so under section 72A¹, if such loss or depreciation is attributable to any of the prescribed ineligible deductions.
- Where there is a depreciation allowance in respect of a block of asset which has not been given full effect prior to AY beginning on the 1 April 2020, corresponding adjustment shall be made to the written down value of such block of assets as on the 1 April 2019 in the prescribed manner, if this option is exercised for a previous year relevant to the AY beginning on the 1 April 2020.
- In case of a person, having a Unit in the International Financial Services Centre², which has exercised this option, the conditions provided in the provisions shall be modified to the extent that the deduction under Section 80LA of the Act shall be available to such Unit subject to fulfilment of the conditions. The term 'Unit' shall have the same meaning as assigned to it in Section 2 of the Special Economic Zones Act, 2005.
- In case of a person, where the option exercised by it under Section 115BAB³ of the Act has been rendered invalid due to violation of certain prescribed conditions, such person may exercise option under these provisions.

¹ Section 72A - Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

² As referred to in Section 80LA(1A) of the Act

³ Tax concession for new domestic manufacturing companies

Tax concession for new domestic manufacturing companies

The Ordinance introduced a new Section 115BAB with effect from FY 2019-20 [AY 2020-21] to provide an option for a concessional tax at the rate of 15 per cent in the case of a new domestic manufacturing company subject to the certain conditions. The Bill has proposed the following additional conditions in these provisions:

- Where the total income of the person, includes any income, which has neither been derived from nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided separately, such income shall be taxed at the rate of 22 per cent. Further, no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income.
- The income-tax payable in respect of the income of the person deemed not at arm's length as prescribed under this section (including transfer pricing provisions), shall be computed at the rate of thirty per cent.
- The income-tax payable in respect of short-term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed at the rate of twenty-two per cent.
- Where the person fails to satisfy the prescribed conditions in any previous year, the option under these provisions shall become invalid in respect of the relevant AY and subsequent AYs and other provisions of the Act shall apply as if the option had not been exercised for the AY and subsequent AYs.
- The business of manufacture or production of any article or thing referred to in this section shall not include business of –
 - 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 film; or
 - Any other business as may be notified by the central government in this behalf.
- The total income of the company is to be computed without set-off of any loss or allowance for unabsorbed depreciation deemed so under Section 72A of the Act, where such loss or depreciation is attributable to any of the prescribed ineligible deductions.

- In case of an amalgamation, the option under this provision shall remain valid in case of the amalgamated company only and if the specified conditions are continued to be satisfied by such company.
- If any difficulty arises regarding fulfilment of the prescribed conditions, the Central Board of Direct Taxes (CBDT) may, with the approval of the central government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery. Further, guidelines issued by CBDT shall be laid before each house of parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.

MAT

The Ordinance reduced the MAT rate from 18.5 per cent to 15 per cent applicable from the previous year relevant to the assessment year commencing on or after 1 April 2020.

The Bill provides that the proposed MAT rate of 15 per cent shall be applicable from the previous year commencing on or after 1 April 2020.

MAT credit (Section 115JAA)

Section 115JAA of the Act has been proposed to be amended with effect from 1 April 2020 whereby Minimum Alternate Tax (MAT) credit shall not be available to a person who has exercised the option under Section 115BAA of the Act.

Surcharge

The Finance Act 2019 provides that in the case of 'domestic company', the amount of 'advance tax' shall be increased by an applicable surcharge.

The said provision is proposed to be amended and for the words 'domestic company', the words 'domestic company except such domestic company whose income is chargeable to tax under Section 115BAA or Section 115BAB of the Income-tax Act' shall be inserted.

As prescribed under the Ordinance, the surcharge shall continue to be levied at the rate of 10 per cent in case of the companies that avail the concessional tax rate under Section 115BAA or Section 115BAB of the Act.

Our comments

By way of Ordinance, the Government has reduced the corporate tax rate for specified domestic companies and newly set up manufacturing companies in order to bring the corporate tax at par with various countries like Russia, China, etc.

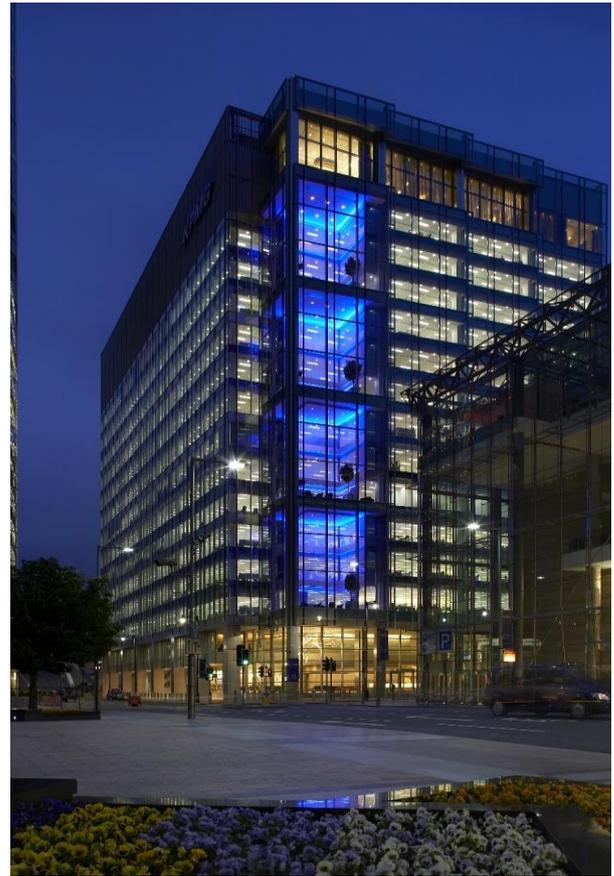
After introduction of the Ordinance representations were made by the stakeholders with respect to issues relating to exercise of option under Section 115BAA of the Act vis-à-vis allowability of brought forward loss on account of additional depreciation/MAT credit. The Central Board of Direct Taxes (CBDT)⁴ clarified that a domestic company which would exercise option of benefit of lower tax rate under Section 115BAA shall not be allowed to claim any brought forward loss on account of additional depreciation/MAT credit. However, the CBDT circular is not binding on the taxpayer and thus there was a question with respect to the legality of such circular.

Now while introducing the Bill in the Lok Sabha, the Government has given clarity on the above aspects by amending the relevant provisions. It has been provided that the taxpayer who will opt for lower tax rate benefit under Section 115BAA will not be eligible set-off of unabsorbed additional depreciation/MAT credit.

For availing reduced rate of 15 per cent, the Government has excluded certain activities from the ambit of 'manufacture or production of any article or thing' like development of computer software in any form or in any media, mining, etc. The clarification regarding software is a departure from a long-standing position that the development of software amounts to the production of an article or thing. There was a specific amendment by the Finance Act, 1993 under Section 10A of the Act whereby the scope of the term 'produce' was enlarged to include production of computer programmes. This change will be far reaching.

The Government also clarified that the CBDT with the approval of government may issue necessary guidelines for the purpose of difficulty and to promote manufacturing or production of article or thing using new plant and machinery.

While the broad scheme of providing the reduced rates of 22 per cent and 15 per cent remains unchanged, several important changes proposed in the Bill need to be evaluated by companies that are planning to avail these options.



⁴ Vide Circular No. 29/2019, dated 2 October 2019

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