TAX UPDATE - AMENDMENTS IN CORPORATE TAX RATES

Union Finance Minister Nirmala Sitharaman addressed a press conference in Panjim, Goa on September 20, 2019. The Finance Minister announced the proposals to slash the corporate tax rates for domestic companies and for new domestic manufacturing companies. The ordinance for slashing the tax rate has already been passed. The tax exemptions will be effective from the current financial year which began on April 1, 2019.

We have summarized the amendments made by this ordinance for your ready refernce:

Key Highlights of the Amendments

- **Corporate tax rate slashed (Section 115BAA)**

  - The current corporate tax rates as per Finance Act, 2019 are 30% and 25% for companies having turnover or gross receipts not exceeding Rs. 400 crores in the FY 2017-18. This provision has now been amended and accordingly, any domestic company has been provided with an option to pay income tax at the rate of 22% subject to the condition that they will not avail any exemption/incentive.

  - Exemption / Incentive that shall not be availed to exercise this option of reduced tax rates includes the following:

Section	Particulars
10AA	Special provisions in respect of newly established Units in Special Economic Zones.
32(1)(iia)	Additional depreciation under Income Tax Act.
32AD	Investment in new plant or machinery in notified backward areas in certain States.
33AB	Exemption allowed to business of growing and manufacturing tea or coffee or rubber in India.
35 (1) (ii) (1) (iia) (1)(iii) (2AA) (2AB)	Expenditure on scientific research: any sum paid to association, university, college or other institution; any sum paid to a company to be used by it for scientific research; any sum paid to a research association for social science or statistical research; any sum paid to a National Laboratory or IIT with specific direction; company engaged in the business of bio-technology.
33ABA	Site Restoration Fund.
35AD	Deduction in respect of expenditure on specified business.
35CCC	Expenditure on agricultural extension project.
35CCD	Expenditure on skill development project.
Chapter VI-A under the heading "C – Deductions in respect of certain incomes" except Section 80JJAA of Income Tax Act, 1961.	

  - The above mentioned companies will not be allowed a set off of any loss carried forward from past years, to the extent the loss pertains to specified incentives/deductions.

  - Also such companies shall not be required to pay minimum alternative tax.

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- The revised rates of surcharge applicable to domestic companies which opt for a lower base tax rate of 22% are given in the table below:

<table>
<tr><th>Aggregate income</th><th>Existing rate of surcharge (%)</th><th>Revised rate of surcharge (%)</th></tr>
<tr><td>Income exceeding INR 1 crore but not exceeding INR 10 crore</td><td>7</td><td rowspan="2">10</td></tr>
<tr><td>Income exceeding INR 10 Crore</td><td>12</td></tr>
</table>

New domestic company to pay lower rate of income tax at 15% (Section 115BAB)

- In order to promote and boost ‘Make-in-India’ initiative of the Government, a new provision has been inserted with effect from FY 2019-20 which allows any new domestic company incorporated on or after 1st October, 2019 making fresh investment in manufacturing an option to pay income-tax at the rate of 15%.

- This benefit is available to companies which do not avail any exemption/incentive and commences their production on or before 31st March, 2023.

- The newly formed company shall not be due to splitting up, or the reconstruction of a business already in existence except in the cases specified under section 33B and within the specified time thereunder.

- Such companies shall not be required to pay Minimum Alternate Tax. The revised rates of surcharge are also applicable to these new domestic companies.

- If the tax authorities are of the view that due to the close connection between a new domestic company which has opted for the lower rate of 15% and another person, the business between them is arranged in such a manner that profits exceeding ordinary profits are expected to arise to the new domestic company and the transaction value exceeds INR 20 crore, such a transaction will be considered as a ‘Specified Domestic Transaction’ and relevant domestic transfer pricing provisions will apply.

Optional tax rates

- Any company which does not opt for the concessional tax regime and avails the tax exemption/incentive shall continue to pay tax at the pre-amended rate. However, these companies can opt for the concessional tax regime after expiry of their tax holiday/exemption period.

- Once the company exercises the option they shall be liable to pay tax at the rate of 22% and option once exercised cannot be subsequently withdrawn.

MAT reduced from 18.5% to 15%

- Companies opting for reduced rate under section 115BAA or section 115BAB of the IT Act shall be exempted from MAT Minimum Alternate Tax (MAT). For companies not opting for reduced corporate tax rate, MAT under section 115JB is reduced to 15 % (Effective Rate – 17.47%) from fiscal year 2019-20.

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- **Enhanced surcharge not applicable on capital gains**

  - Surcharge rate was increased by the Budget 2019. Those earning more than Rs 2 crore but up to Rs 5 crore and those earning more than Rs 5 crore would have to pay the surcharge at the rate of 25 per cent and 37 per cent respectively.

  - In order to stabilise the flow of funds into the capital market, it is provided that 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 individual, HUF, AOP, BOI and AJP.

  - 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).

- **Buyback Tax exempted**

  - In order to provide relief to listed companies which have already made a public announcement of buy-back before 5 July 2019, it is provided that tax on buyback of shares in case of such companies shall not be charged.

- **CSR Contributions**

  - The scope of CSR 2 percent spending has been expanded on incubators funded by Central or State Government or any agency or Public Sector Undertaking of Central or State Government, and, making contributions 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 SDGs.

- **Effective Tax Rates after above amendments:**

Sr. No.	Nature of Domestic Company	Existing Effective Tax Rate	Revised Effective Tax Rate	Whether MAT is Applicable
1	Total turnover or gross receipts < INR400 Crores during FY 2017-18 or new manufacturing companies incorporated **<u>till 30th September, 2019.</u>** a) Income < INR 1crore b) Income > INR 1 crore, but < INR 10 crore c) Income > INR 10 crore	26.00 27.82 29.12	25.17 25.17 25.17	YES
2	Optional tax rate for new manufacturing Companies **<u>incorporated on or after 1st Oct,2019</u>** a) Income < INR 1crore b) Income > INR 1 crore, but <INR 10 crore c) Income > INR 10 crore	26.00 27.82 29.12	17.16 17.16 17.16	NO
3	Other Domestic Companies a) Income < INR 1Crore b) Income > INR 1 Crore, but <INR 10 Crore c) Income > INR 10 Crore	31.20 33.38 34.94	25.17 25.17 25.17	NO

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Conclusion:

The measures taken were by far the biggest and boldest steps to revive the Indian economy, which until recently was feted as a global growth engine. The goal is to turn India into an investor's hub, demonstrate government's clear intent on economic management, restore investors' confidence and boost the sentiments and demand. The new rates will bring India closer, in some cases lower, to the rates prevalent in many of the emerging and industrialised countries.

These announcements will also help the Indian economy and will have positive consequences, especially on the manufacturing sector and will provide an impetus to foreign investment, which in turn will help to bring the economy back on a strong growth trajectory.

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