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CHAPTER

TAXATION LAWS (AMENDMENT) ACT, 2019

1.1 BACKDROP

Subsequent to the enactment of the Finance (No. 2) Act, 2019 in view of various developments, it was felt that there is an urgent need to take additional fiscal measures so as to boost the investment and growth in the economy for which the Government had already announced certain measures. Some of these measures related to amendments to the Income-tax Act, 1961 (“the Act”) and to the Finance (No. 2) Act, 2019.

It was also noticed that many countries, the world over, had reduced corporate income-tax to attract investment and create employment opportunities, thus, necessitating the need of similar measures in the form of reduction of corporate income-tax payable by domestic companies in order to make Indian industry more competitive. Therefore, it was felt that a fiscal stimulus through reduction of corporate income-tax rate of domestic companies was needed so as to attract the investment, generate employment and boost the economy of the country.

In view of the above, it became necessary to amend certain provisions of the Income-tax Act, and the Finance (No. 2) Act, 2019. However, as the Parliament was not in session and in view of the urgency felt in the matter, the Taxation Laws (Amendment) Ordinance, 2019 (hereinafter referred to as “the Ordinance”) was promulgated by the President of India on the 20th day of September, 2019.

It came into force on 20-09-2019 and has amended the provisions of the Income-tax Act, 1961 (‘the Act’) and the Finance (No. 2) Act, 2019 in order to:

- (i) Reduce corporate tax rate and take the process of reforms in corporate tax rate announced in the 2015 Union Budget Speech to fruition. [**Chapters 2 to 5**]

- (ii) Provide relief to listed companies which have already made a public announcement of buy-back before 5th July 2019, it is provided that tax on buy-back of shares in case of such companies shall not be charged. [**Chapter 6**]
- (iii) Exemption from enhanced surcharge imposed by Finance (No. 2) Act, 2019 to capital gains from 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. This relief is for individual, HUF, AOP, BOI and AJP. [**Chapter 7**]
- (iv) Provide exemption from enhanced surcharge to capital gains arising to FPIs on sale of any security including derivatives. [**Chapter 8**]

The Taxation Laws (Amendment) Act, 2019 (hereinafter referred to as “the TLA, 2019” or “the TLA” for brevity’s sake) replaces the Ordinance.

1.2 TAXATION LAWS (AMENDMENT) ACT, 2019 (TLA, 2019)

The TLA, 2019 is on the lines of the Ordinance. However, in view of the need to provide certainty and greater clarity, certain further amendments have been made by the TLA to the Income-tax Act and the Finance (No. 2) Act, 2019, which are as under—

- (i) Amendment to section 115BAA of the Act, relating to “tax on income of certain domestic companies”, so as to—
 - (a) insert a proviso to sub-section (1) that the option of the person (domestic company) with respect to computation of income-tax shall become invalid, if the person fails to fulfil the conditions mentioned in sub-section (2) of the said section;
 - (b) insert a new sub-section in the said section relating to option by the domestic company having a Unit in the International Financial Services Centre; and
 - (c) to insert a proviso to sub-section (5) that in case where option of the person becomes invalid under section 115BAB for the specified reasons, it may exercise option under section 115BAA;
- (ii) Amendment to section 115BAB, relating to “tax on income of new manufacturing domestic companies”, so as to—

- (a) insert certain provisions in sub-section (1) relating to computation of different rates of tax for the reasons mentioned therein;
- (b) clarify that the benefit of this section shall not be available to the business of—
 - (i) development of computer software in any form or in any media;
 - (ii) mining;
 - (iii) conversion of marble blocks or similar items into slabs;
 - (iv) bottling of gas into cylinder;
 - (v) printing of books or production of cinematograph film; or
 - (vi) any other business notified by Central Government in this behalf; and
- (c) insert a new sub-section that if any difficulty arises regarding fulfilment of conditions, the Board may issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery;
- (iii) Amendment to section 115JAA relating to “tax credit in respect of tax paid on deemed income of certain companies” so as to insert a new sub-section (8) providing that the provisions of section 115JAA shall not apply to a person who has exercised the option under section 115BAA; and
- (iv) to amend the provisions of the Finance (No. 2) Act, 2019 which are of consequential in nature.

1.3 CORPORATE TAX RATE REFORMS

In his Budget Speech of 2015, the then Finance Minister called Constitutional Amendment Bill introduced for Goods and Services Tax (GST) as a “transformative piece of legislation in indirect taxation” and stressed the need for “matching transformative measures in direct taxation”. He pointed out that “The basic rate of Corporate Tax in India at 30% is higher than the rates prevalent in the other major Asian economies, making our domestic industry uncompetitive”. He explained that a regime of tax exemptions meant that the effective collection of Corporate Tax was only 23%. This meant that “We lose out on both counts, i.e. we are considered as having a high Corporate Tax regime but we do not get

that tax due to excessive exemptions. A regime of exemptions has led to pressure groups, litigation and loss of revenue. It also gives room for avoidable discretion". Therefore, the then Finance Minister outlined the following road map for reduction of corporate tax rate:

"97.....I, therefore, propose to reduce the rate of Corporate Tax from 30% to 25% over the next 4 years. This will lead to higher level of investment, higher growth and more jobs. This process of reduction has to be necessarily accompanied by rationalisation and removal of various kinds of tax exemptions and incentives for corporate taxpayers, which incidentally account for a large number of tax disputes."

Though the Finance Minister wanted to start the phased reduction of corporate tax rate and phased elimination of exemptions right away in the 2015 Budget itself, he did not do so as he "thought it would be appropriate to give advance notice that these changes will start from the next financial year" so as "to avoid sudden surprises and instability in tax policy".

Following up on the roadmap set by the Union Budget of 2015, the Union Budget of 2016 effected the following reductions in corporate tax rate:

- (i) Reduced the corporate income tax rate of relatively small enterprises i.e. companies with turnover not exceeding Rs. 5 crore (in the financial year ending March 2015), to 29% plus surcharge and cess.
- (ii) New section 115BA inserted in the Act whereby new manufacturing companies who do not avail of any exemption would be charged only 25% income-tax plus surcharge and cess. The new manufacturing companies which are incorporated on or after 1.03.2016 are proposed to be given an option to be taxed at 25% + surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.

The Union Budget of 2017 gave further relief to small companies (Micros, Small and Medium Enterprises or MSMEs) by increasing turnover limit for concessional tax rate from Rs. 5 crores to Rs. 50 crores and reducing the concessional tax rate from 29% plus surcharge plus cess to 25% plus surcharge plus cess. The Union Budget of 2018 further increased turnover limit from Rs. 50 crores to Rs. 250 crores for a company to qualify as MSME company and avail lower tax rate of 25% plus surcharge plus cess. The turnover limit for a company to qualify as MSME was raised to Rs. 400 crores by the Finance (No. 2) Act, 2019 (Union Budget, 2019).

After the passage of the Finance (No. 2) Act, 2019, the news of slow-down in GDP growth to 5% came. The Government had set itself an ambitious target to make India a \$5 trillion economy by 2024. To attain this ambitious economic goal, it was essential that the slowdown be reversed and the economy be put on high GDP growth path of at least 9% to 10%. Besides, Indonesia too had announced roadmap for reducing corporate tax rate. Bloomberg had reported that the corporate tax of Indonesia “will be gradually lowered to 20% starting 2021 from 25% now and companies listing their shares may be subjected to a lower rate of 17% for a period of five years”.

The prospect of investments heading to other countries with lower tax rates stared India and looked like hurting our chances for fast GDP growth to prosper our people. Faced with these challenges, the Union Government announced a series of stimulus measures starting from 23-08-2019. The fourth stimulus announced on 20-09-2019 is the Ordinance amending the Act and the Finance (No. 2) Act, 2019 for corporate tax rate cut reforms.

The Ordinance has inserted two new sections 115BAA and 115BAB with effect from assessment year 2020-21 and has made consequential amendments to section 115BA, section 115JB and section 92BA. Both these new sections are along the lines of section 115BA whereby domestic companies can avail lower corporate tax rate by opting not to claim specified tax exemptions and reliefs [*see* **Para 2.2(j)(i)/Para 2.2(j)(ii)**] and the option they choose (lower tax rate or tax exemption) has to be continued for following years and they cant switch between one option and the other from one year to another. *There is no turnover limit for claiming benefit of lower tax rate under sections 115BAA and 115BAB. Any domestic company irrespective of turnover size can claim benefit under these sections.*

The PIB Press Release dated 20-09-2019 explains new sections 115BAA [*see* **Chapter 3**] and 115BAB [*see* **Chapter 2**] as under:

- (a) In order to promote growth and investment, a new provision has been inserted in the Income-tax Act with effect from FY 2019-20 which allows any domestic company an option to pay income-tax at the rate of 22% subject to condition that they will not avail any exemption/incentive. The effective tax rate for these companies shall be 25.17% inclusive of surcharge & cess. Also, such companies shall not be required to pay Minimum Alternate Tax.
- (b) In order to attract fresh investment in manufacturing and thereby provide boost to ‘Make-in-India’ initiative of the Government,

another new provision has been inserted in the Income-tax Act 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 effective tax rate for these companies shall be 17.16% inclusive of surcharge & cess. Also, such companies shall not be required to pay Minimum Alternate Tax.

- (c) A 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. After the exercise of the option they shall be liable to pay tax at the rate of 22% and option once exercised cannot be subsequently withdrawn. Further, in order to provide relief to companies which continue to avail exemptions/incentives, the rate of Minimum Alternate Tax has been reduced from existing 18.5% to 15%.

The TLA replaces the Ordinance. TLA is on the same lines as the Ordinance. However, the TLA makes certain amendments to sections 115BAA, 115BAB and 115JAA to bring greater clarity in legal provisions.

1.3-1 Comparison of sections 115BA, 115BAA and 115BAB

Sr. No.	Points of comparison	Section 115BA	New Section 115BAA	New Section 115BAB
(1)	Deals with	Tax on income of certain domestic manufacturing companies	Tax on income of certain domestic companies	Tax on income of new manufacturing domestic companies
(2)	When company must be set up and registered to qualify for availing benefit under the section	On or after 01-03-2016	Benefit under the section is available irrespective of date on which company was set up and registered	On or after 01-10-2019
(3)	Tax rate	25%	22%	15%
(4)	Rate of surcharge applicable	7% if company's total income exceeds	10%	10%

Sr. No.	Points of comparison	Section 115BA	New Section 115BAA	New Section 115BAB
		Rs. 1 cr but not Rs. 10 cr 12% if company's total income exceeds Rs. 10 cr		
(5)	Effective tax rate including surcharge and Health and Education Cess	26% if company's total income is Rs. 1 cr or less 27.82% if company's total income exceeds Rs. 1 cr but not Rs. 10 cr 29.12% if company's total income exceeds Rs. 10 cr	25.17%	17.16%
(6)	Whether condition regarding, business of company not formed by splitting up existing business, is applicable under the section	No	No	Yes
(7)	Whether stipulations regarding, non-use of second hand plant and machinery, is applicable under the section	No	No	Yes
(8)	Whether stipulations regarding, non-use of building earlier used as hotel or convention centre, is applicable	No	No	Yes
(9)	Exemption from MAT u/s 115JB	No	Yes	Yes
(10)	When option for benefits under section should be exercised	On or before the due date specified under section 139(1) for furnishing the first of the	On or before the due date specified under section 139(1) for furnishing the return of income for any	On or before the due date specified under section 139(1) for furnishing the first of the return of income which

Sr. No.	Points of comparison	Section 115BA	New Section 115BAA	New Section 115BAB
		return of income which the assessee is required to furnish under the provisions of the Act.	previous year relevant to the assessment year commencing on or after 01-04-2020.	the assessee is required to furnish under the provisions of the Act.
(11)	Whether company can opt to claim exemptions and pay tax at pre-amended rate and can opt for the concessional tax regime after expiry of their tax holiday/exemption period	No, since option to avail the section has to be exercised on or before the due date specified under section 139(1) for furnishing the first of the return of income which the assessee is required to furnish under the provisions of the Act.	Yes. See Press Release (para c.) and also point No.(10) above in this table	No, since option to avail the section has to be exercised on or before the due date specified under section 139(1) for furnishing the first of the return of income which the assessee is required to furnish under the provisions of the Act.
(12)	Whether existing company can migrate from section 115BA to the new section	—	Yes. Company which has opted for section 115BA can irrevocably opt for section 115BAA and thereupon withdraw the option exercised for section 115BA.	No. Company which has opted for section 115BA can't opt for section 115BAB.
(13)	What happens to existing unutilised MAT credit?	Company can carry forward and utilise it as per section 115JAA	Unutilised MAT credit can be carried forward and set off if company opts for section 115BAA [Section 115JAA(8) - See Para 1.4; Para 5.4]	No question of unutilised MAT credit as section applies to new companies.

Sr. No.	Points of comparison	Section 115BA	New Section 115BAA	New Section 115BAB
(14)	Scope of the term “manufacturing or production”	Manufacturing as defined in section 2(29BA) Production - no statutory definition	—	Manufacturing-- as defined in section 2(29BA) but excluding the processes / businesses/activities specified in <i>Explanation</i> to section 115BAB(2) (b) Production - shall not include businesses/activities specified in <i>Explanation</i> to section 115BAB(2) (b)
(15)	Consequences if option exercised rendered invalid due to breach of conditions	—	Option cant be availed for the assessment year in which the breach takes place and also subsequent assessment years. Assessment shall be done as if option has not been exercised.	Assessee-company can opt for section 115BAA if option exercised for section 115BAB rendered invalid due to non-compliance with conditions in clause (b) or sub-clause (ii)/(iii) of clause (a) of sub-section (2) of section 115BAB
(16)	Tax rate applicable for income neither derived from nor incidental to manufacture or production for which no specific tax rate provided under Chapter XII	See (5) above - 26%, 27.82% or 29.12% depending on income of the company	25.17%	25.17%
(17)	Opting in	Option has to be exercised by the company in the prescribed manner[Rule 21AD; Form 10-IB] on or	Option has to be exercised by the company in the prescribed manner on or before the due date specified under sub-section (1)	Option has to be exercised by the company in the prescribed manner on or before the due date specified under section 139(1)

Sr. No.	Points of comparison	Section 115BA	New Section 115BAA	New Section 115BAB
		before the due date specified under section 139(1) for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act	of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years.	for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years
(18)	Opting out	No exit option.. once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.	Company can opt out by claiming deductions/reliefs not to be claimed [See Para 2.2(j)(i)/(ii)]. Once company opts out in this manner, it can never ever again avail section 115BAA.	Company can opt out by claiming deductions/reliefs not to be claimed [See Para 3.2(d)(i)/(ii)/(iii)]. Once company opts out in this manner, it can never ever again avail section 115BAB. Nor can the company opt for section 115BAA.
(19)	Forced exit due to non-compliance with conditions	No such provisions	If company claims deductions/reliefs which are not to be claimed [See Para 2.2(j)(i)/(ii)], the option exercised will be invalidated. The option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment	Where the company fails to satisfy the conditions contained in sub-section (2) of section 115BAB in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years

Sr. No.	Points of comparison	Section 115BA	New Section 115BAA	New Section 115BAB
			<p>years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.</p>	<p>and other provisions of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years. However, where the option exercised by company under section 115BAB has been rendered invalid due to violation of conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a), or clause (b) of sub-section (2) of said section, the company may exercise option under section 115BAA.</p>
(20)	<p>If difficulties arise in complying with the section</p>	<p>—</p>	<p>—</p>	<p>If any difficulty arises regarding fulfilment of the conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (2) or clause (b) of said sub-section, as the case may be, the Board may, with the approval of the Central Government, is-</p>

<i>Sr. No.</i>	<i>Points of comparison</i>	<i>Section 115BA</i>	<i>New Section 115BAA</i>	<i>New Section 115BAB</i>
				sue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery.

1.3-2 Impact of new section 115BAA on existing domestic manufacturing companies who are presently availing section 115BA

The following table summarises the impact on existing domestic manufacturing companies who are availing section 115BA and who opt for new section 115BAA:

<i>Sr. No.</i>	<i>Points of comparison</i>	<i>Existing regime under section 115BA</i>	<i>New regime under section 115BAA</i>	<i>Remarks</i>
1.	Tax rate	25%	22%	—
2.	Surcharge	If total income (TI) exceeds Rs. 1 cr but not Rs. 10 cr, then 7%. If TI exceeds Rs. 10 cr, then 12%	10%	—
3.	Effective tax rate including surcharge and cess	26% if total income is Rs. 1 cr or less 27.82% if total income exceeds Rs. 1 cr but not Rs. 10 cr 29.12% if total income exceeds Rs. 10 cr	25.17% 25.17% 25.17%	0.83% tax saving 2.65% tax saving 3.95% tax saving
4.	MAT	MAT applicable. If MAT is higher than tax @ 25%, then MAT will have to be paid.	No MAT	—
5.	MAT credit unutilised	Can be carried forward and set	MAT credit lying unutilised	Company should contin-