

Taxation Laws (Amendment) Ordinance, 2019

Friday, 4th October, 2019

WIRC of ICAI

ICAI Bhavan,

Bandra, Mumbai

Tax on Income of certain Domestic Companies – s. 115BAA-I

- New provision w.e.f. A.Y. 2020-2021, onwards
- Benefit of concessional rate of taxation
- Restricted for domestic companies
- Overriding effect
 - Subject to Chapter XII
 - Other than s. 115BA and s. 115BAA
 - Mutually exclusive
- Income tax @ 22% on total income (existing 25 or 30%)
 - of a Domestic company s. 2(22A)
 - Surcharge(10%) and Education Cess (4%)
 - Effective rate 25.16%
 - Turnover not relevant
 - MAT exemption

Tax on Income of certain Domestic Companies – s. 115BAA-II

- Option of the company
 - by due date u/s 139(1)
 - prescribed manner
 - any previous year
 - automatic for subsequent years
 - withdrawal not possible
 - company with TO > Rs. 400 crore also eligible
 - shifting option for s.115BA Company
- Benefit conditional
- Conditions for computation of total income
 - without deduction under;
 - S. 10AA and ch.VIA (part C other than s. 80JJA)
 - S. 32(i)(iia), 32AD, 33AB, 33ABA
 - S. 35(2AA) & (2AB), 35AA, 35CCC, 35CCD

Tax on Income of certain Domestic Companies – s. 115BAA-III

- without set-off of loss c/f from earlier A.Y.
 - attributable to specified sections
- with claiming depreciation u/s 32
- Deemed set-off of Specified losses
 - for years up to A.Y. 2019-20
 - status of losses from A.Y. 2020-21 and onwards
 - status of unspecified losses
- Deemed claim and deduction of Specified benefits
 - Status for subsequent years

Tax on Income of certain Domestic Companies

– S. 115BAA-IV

- Irrelevant consideration
 - Business, Manufacture
 - Date of setting up
 - Turnover
 - Composition and head income
- Existing company eligible
 - Shift beneficial (0.83% to 3.95%)
 - For service, Trading, No specified claim companies
 - Year of shift at discretion
 - Impact of flat rate of SC @ 10%
- Maximum saving for TO > Rs.400 crore & Income > Rs.10 crore
 - @ 9.77% (28% of existing tax)
 - @ 0.7% or about 8,500 companies
 - Set-off of unabsorbed additional depreciation u/s 32(1)(iia)
 - Circular No. 29 of 2019 dt.02.10.2019
- Benefit of concessional rate under Chapter XII

Tax on Income of New Domestic Manufacturing Companies – s. 115BAB -I

- New provision w.e.f. A.Y. 2020-2021
- Benefit of concessional rate of taxation
- Restricted for Companies
- Overriding effect
 - subject to Chapter XII
 - other than s. 115BA and 115BAA
 - mutually exclusive
- Income tax @ 15% on total income (existing 25 or 30%)
 - of a domestic company- s. 2(22A)
 - Engaged in manufacturing or production - s.2(29B)
 - Surcharge (10%) and education cess (4%)
 - effective rate 17.16%
 - turnover not relevant
- Exemption from MAT

Tax on Income of certain New Domestic Manufacturing Companies – s. 115BAB -II

- Option of the Company
 - by due date u/s139(1)
 - for first of the return of income
 - prescribed manner
 - any previous year ?
 - automatic for subsequent years
 - withdrawal not possible
 - company with TO > Rs. 400 crore also eligible
 - not possible for existing company
- Conditional benefit

Tax on Income of certain New Domestic Manufacturing Companies – s. 115BAB -III

- Essential conditions
 - set-up and registration and commencement of manufacturing
 - during 01.10.2019 to 31.03.2023
 - not formed by splitting up or re-construction
 - of existing business
 - Texmaco 107 ITR 195 (SC)
 - exception for s. 33B units rehab.
 - no user of ‘used’ of plant and machinery
 - exception for overseas user by other person
 - subject to 3 specified conditions
 - exception for P & M in value up to 20% of P & M
 - no user of ‘used’ building
 - used as a hotel or convention centre – s. 80ID
 - restriction not assessee specific

Tax on Income of certain New Domestic Manufacturing Companies – s. 115BAB -IV

- Conditions for computation of total income
 - without deduction under ;
 - S. 10AA or ch.VI-A (Part C other than s. 80JJA)
 - S. 32(i)(ia), 32AD, 33AB, 33ABA
 - S. 35(2AA) and (2AB), 35AD, 35CCC,35CCD
 - business of
 - manufacturing and production of
 - article or things
 - and research in relation to or
 - distribution of
 - » such article or thing
 - Manufactured or produced by it
 - cumulative compliance or not
 - exclusive engagement
 - any other business to be fatal

Tax on Income of certain New Domestic Manufacturing Companies – s. 115BAB -V

- without set-off of ‘loss, c/f from earlier A.Y.
 - attributable to specified sections
- with claiming depreciation u/s 32
- Deemed set-off of specified losses
 - years up to A.Y. 2019-20
 - status of losses for A.Y. 2020-21 and onwards
 - status of unspecified losses
- Deemed claim and deductions of specified benefits
 - Status for subsequent years
- Power of AO
 - to ascertain reasonable profits
 - cases of close connection or other reason
 - business arrangement
 - Applicable s. 92B ALP in case of SDT

Tax on Income of certain New Domestic Manufacturing Companies – s. 115BAB -VI

- Concessional rates possible under Chapter XII of ITA
- Substantial benefit for new co.s with top performance
 - 17.78% (34.94% - 17.16%)
- No possibility of unabsorbed loss or depreciation
- Possibility of shifting to s. 115BAA on non-compliance
- Consequence of non-compliance
 - Rates and claims
 - Auto withdrawal
- Commencement related to ‘manufacturing’ by 31.03.2023
- Power of AO

Tax on Income of certain New Domestic Manufacturing Companies – s. 115BAB -VII

- Relevance of Research or Distribution
- Negative stipulation for other business
 - Non-manufacturing income
 - Service, ASS, AMC income
- Income under other ‘Heads of Income’
- Whether manufacturing
 - Power, Blending, Mixing
 - Food, Filtered water
 - Infrastructure, Contractor

Exemptions or Deductions not available

- S.10AA Deduction for units in SEZ
- S.32(1)(ia) Additional depreciation for new P & M
- S.32AD Deduction for P& M backward areas
- S.33AB Deduction in for tea, coffee or rubber business
- S.33ABA Deduction for business of petroleum or natural gas
- S.35(1)(ii) Deduction for donation to approved scientific research asso., etc.
- S.35(1) Deduction for payment to Indian co. for scientific research
- S.35(1)(iii) Deduction for donation for research in social science or statistical research
- S.35(2AA) Deduction for donation to National Laboratory or IITs, etc.
- S.35(2AB) Deduction for capital expenditure (excluding cost of land building) on scientific research
- Chapter VI A Deductions under Part C Other than s. 80JJA

General

- Overriding effect
 - Chapter XII, ITA, DTAA
- New company v. NIU
- Applicability of GAAR
- Impact of DDT and other s. 115 taxes
- Consequential impact on revenue loss
- Destination India
- Relevant for Advance tax and TDS
- Duration of ordinance
- S. 92BA – Specified domestic Transaction
- S.115BA – complimentary amendments
- S. 32 - higher rate of depreciation for new cars/vehicles

Minimum Alternative tax – s. 115JB - I

- Amendment w.e.f. A.Y. 2020-21
- Reduction in rate of MAT
 - from 18.5% to 15%
 - effective rate – 16.69 Or 17.47%
 - applicable to all liable companies
- Exemption from MAT vide s. 115JB(5)
 - Companies opting for s. 115BAA and 115BAB

Minimum Alternative tax – s. 115JB - II

- Total Income closer to Book profit
 - Differential rate of depreciation
 - Deeming fiction of s. 38 to s. 43D
- Benefit of Indexation for LTCG not wasted
- Write backs may be saved from taxation
- MAT credit – Two views
 - Circular No. 29 of 2019 dt. 02.10.2019
 - Other view

Buy-back of Shares – s. 115QA

- Amendment w.e.f. 5th July, 2019
- Exemption from BBT u/s 115QA(1)
 - shares listed on RSE
 - public announcement prior to 05.07.2019
 - accordance with SEBI Regulations, 2018
 - under SEBI Act, 1992
- Treatment of profits or Gains

Sur-charge and Domestic Companies

- Substantial changes w.e.f. A.Y. 2020-21
- Amendment - By TL(A)O, 2019 - In F(No. 2)A, 2019
- Sur-charge at a flat rate of 10% of Income tax
 - on tax payable by Domestic companies
 - opting for relief u/s 115BAA and s. 115BAB
 - not eligible for marginal relief
 - regular rate of sur-charge
 - for income covered by s. 111A/112A
- On other companies – NIL or 7% or 12%

Sur-charge on Individual, HUF, AOI, BOI, etc.

Amendments-I

- Substantial changes for A.Y. 2020-21
- Amendment - By TL(A)O, 2019 - In F(No. 2)A, 2019
- Withdrawal of enhanced rate of sur-charge (25% and 37%)
- Withdrawals restricted to Income of specified nature
 - s. 111A STCG on specified securities (10 or 15%)
 - s. 112A LTCG on specified securities (10 or 15%)
 - s. 115AD(b) STCG on specified securities of FII(10 or 15%)
 - derivatives included
- Other income - continued exposure to higher sur-charge
- Rate of SC was increased by F.(No.2)A, 2019
 - from 10% to 25% on income > Rs.2 crore up to Rs.5 crore
 - from 15% to 37% on income > Rs. 5 crore

Sur-charge on Individual, HUF, AOI, BOI, etc.

Amendments-II

- Final rates
 - income up to Rs. 50 lakh ----- NIL
 - income up to Rs. 1 crore ----- 10%
 - income up to Rs. 2 crore ----- 15%
 - income up to Rs. 5 crore ----- 25% (15%)
 - income > Rs. 5 crore ----- 37% (15%)
 - Unexplained income ----- 25%
- Uniform rate of SC for income up to Rs. 2 crore (10% or 15%)
 - differential rate thereafter for specified capital gains, only
- Flat rate on entire tax once income exceeds specified limits
 - subject to marginal relief
- SC leviable once total income exceeds Rs. 50 lakh
 - Even where specified capital gains < Rs. 50 lakh
- Higher rate of SC on Regular income only
 - only where such income exceeds specified limit

Income tax rate (Basic) for companies

- Domestic company where option exercised
 - s. 115BA and (on or after 01.03.2016) - 25%
 - manufacturing and no benefits
 - s. 115BAA - 22%
 - specified benefits denied
 - s. 115BAB (on or after 01.10.2019) - 15%
 - manufacturing and no benefits
- Domestic company where option not exercised
 - with TO < Rs. 400 crores - 25%
 - with TO > Rs. 400 crores - 30%

Rates of Income tax (Basic) for Individuals, etc.

| | <u>OC</u> | <u>SC</u> | <u>SSC</u> |
|--|-----------|-----------|------------|
| • Income up to 2,50,000 | --- | --- | --- |
| • Income from 2,50,000 to. 3,00,000 | 5% | --- | --- |
| • Income from 3,00,000 to 5,00,000 | 5% | 5% | --- |
| • Income from 5,00,000 to 10,00,000 | 20% | 20% | 20% |
| • Income from 10,00,001 and above | 30% | 30% | 30% |
| • Rebate u/s 87A where Total Income up to Rs. 5,00,000 | | | |

Tax structure for Domestic Companies for A.Y. 2020-2021

| | A | B | C | D | E | F |
|-----|--------------------|------------------------|-----------------|-----------------|---|---|
| I | <u>Particulars</u> | <u>s. 115BA</u> | <u>s.115BAA</u> | <u>s.115BAB</u> | <u>First schedule TO upto 400 Cr.</u> | <u>First Schedule TO>400 Cr.</u> |
| II | Basic Rate | 25% | 22% | 15% | 25% | 30% |
| III | Sur-Charge | 7/12% | 10% | 10% | 7/12% | 7/12% |
| IV | Education Cess | 4% | 4% | 4% | 4% | 4% |
| V | Effective Rate | 26.00/27.82/ 29.12% | 25.17% | 17.16% | 26.00/27.82/ 29.12% | 31.20/33.38/ 34.94% |
| VI | MAT | 15% | N.A. | N.A. | 15% | 15% |

S. 115BAA Effective tax rate & tax savings

(including sur-charge and cess)

| Total Income | 115BAA | TO > 400 crore | TO < 400 crore | Max. Savings |
|---|--------|----------------|----------------|--------------|
| Up to Rs. 1 crore | 25.17% | 31.20% | 26.00% | 6.03/0.83% |
| More than Rs. 1 crore but up to Rs. 10 crore` | 25.17% | 33.38% | 27.82% | 8.21/2.65% |
| More than Rs. 10 crore | 25.17% | 34.94% | 29.12% | 9.77/3.95% |

Amendments - Finance Bill to Finance Act-I

- S. 56(2)(viib) – Angel tax
 - Proposal ; restriction on value of investments in Securities & Cars
 - Act;
 - gains if any, taxable – benefit of DIPP Notification to continue
 - withdrawal of benefit u/s 56(2)(viib) to attract penalty u/s 270A as MRI
 - On difference between FMV and issue price
- s.47(viiab) – Transfer of securities by non-resident
 - Proposal; Not a transfer by category III AIF
 - Act; shift to exemption u/s 10(4D) for gains on transfer
- S. 115R Tax on distribution of income by IFSC unit
 - Proposal; Exemption u/s 115R for specified MFs listed on RSE
 - Act; additional conditions / relaxation for exemption
 - income on transaction in RSE located in IFSC
 - receipt in convertible foreign exchange
 - other income of MFs need not be solely in CFE

Amendments - Finance Bill to Finance Act-II

- S.194& s.198 – TDS on cash withdrawals & Deemed Income
 - Proposal; TDS @ 2% on bank withdrawals > Rs. 1crore
 - Act;
 - limit of Rs. 1 crore qua one or more accounts
 - TDS not to be deemed income
- S. 194M – TDS on specified payment by individuals, HUF,
 - Proposal; TDS @ 5% on payments for work, commission, fees,
 - Act; payments to include brokerage, also
- PMLA & PBPTA amendments
- S.32 - Increase in Rate of Depreciation
 - Acquisition of new vehicles
 - Period during 23.08.2019 to 31.03.2020



Thank you