Ordinance Summary

The Taxation Laws (Amendment) Ordinance, 2019

- The Taxation Laws (Amendment) Ordinance, 2019 was promulgated on September 20, 2019. The Ordinance amends the Income Tax Act, 1961, and the Finance (No. 2) Act, 2019. The Ordinance provides domestic companies with an option to opt for lower tax rates, provided they do not claim certain deductions. It also amends certain provisions regarding levy of surcharge on income from capital gains.
- **Income tax rate for domestic companies:** Currently, domestic companies with annual turnover of up to Rs 400 crore pay income tax at the rate of 25%. For other domestic companies, the tax rate is 30%. The Ordinance provides domestic companies with an option to pay income tax at the rate of 22%, provided they do not claim certain deductions under the Income Tax Act. These include deductions provided for: (i) newly established units in Special Economic Zones, (ii) investment in new plant or machinery in notified backward areas, (iii) expenditure on scientific research, agriculture extension, and skill development projects, (iv) depreciation of new plant or machinery (in certain cases), and (v) various other provisions in the Income Tax Act (under Chapter VI-A, except the deductions provided for employment of new employees).
- **Income tax rate for new domestic manufacturing companies:** The Ordinance provides new domestic manufacturing companies with an option to pay income tax at the rate of 15%, provided they do not claim certain deductions under the Act (as specified above). New manufacturing companies include companies which will be set up and registered after September 30, 2019, and will start manufacturing before April 1, 2023. These will not include companies: (i) formed by splitting up or reconstruction of an existing business, (ii) engaged in any business other than manufacturing, and (iii) using any plant or machinery previously used in India (except under certain specified conditions).
- **Applicability of new tax rates:** Companies can choose to opt for the new tax rate (15% or 22%, whichever is applicable) starting the financial year 2019-20 (i.e. assessment year 2020-21). Once a company has exercised this option, the chosen provision will apply for all the subsequent years.
- **Surcharge on tax payable at new rates:** Currently, domestic companies with income between one crore rupees and Rs 10 crore are required to pay a 7% surcharge on tax. Those with an income of more than Rs 10 crore are required to pay a 12% surcharge on tax. The Ordinance provides that companies opting for the new tax rates (15% or 22%, whichever is applicable) are required to pay a 10% surcharge on the tax payable by them under the respective provisions.
- **Minimum Alternate Tax (MAT):** The Ordinance reduces the MAT rate from 18.5% to 15% with effect from the financial year 2019-20. MAT rate is the minimum percentage of profit that a company is required to pay as tax, in case its tax liability falls below this threshold after claiming deductions under the Act. The Ordinance specifies that MAT will not apply to the domestic companies opting to pay tax at the new rates.
- **Surcharge on capital gains:** Tax and surcharge are levied on capital gains arising from transfer of securities in certain cases. These include: (i) capital gains to foreign institutional investors from securities (other than the units purchased in foreign currency), and (ii) capital gains to individuals, body of individuals, and association of persons from certain short-term and long-term securities liable to securities transaction tax (i.e., equity shares in companies and units of equity oriented funds and business trusts).

  In these cases, surcharge is applicable at the rate of: (i) 10% of tax, for income between Rs 50 lakh and one crore rupees, (ii) 15% of tax, for income between one crore rupees and two crore rupees, (iii) 25% of tax, for income between two crore rupees and five crore rupees, and (iv) 37% of tax, for income more than five crore rupees. The Ordinance allows deduction of capital gains (as specified above) from the total income when the total income exceeds two crore rupees. Further, in such cases, after deducting capital gains, if the revised total income is less than or equal to two crore rupees, surcharge will be levied at a flat rate of 15% of tax.
- **Tax on buy-back of shares:** Buy-back of shares refers to a company purchasing its own shares. When such purchase generates income for the company (because of an increased share price in comparison to the original issue price), the company is required to pay 20% tax on the income so generated. The Ordinance exempts certain listed companies from this requirement. These are companies which made a public announcement regarding buy-back of shares before July 5, 2019 (as per the provisions of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018).

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