# Legal Update on Recent Tax Incentives

DMD® ADVOCATES

September 2019

The Government of India has introduced the Taxation Laws (Amendment) Ordinance 2019 ("**the Ordinance**") on September 20, 2019 and thereby made amendments in the Income-tax Act 1961 ("**the Act**") and the Finance (No. 2) Act 2019. These amendments provide fiscal reliefs that are aimed to attract foreign investment, act as a stimulus to the government's "Make in India" initiative, improve competitiveness of the private sector, job creation and counter the current economic slowdown.

**Key announcements:**

1 **Option for Indian company to pay income tax at the rate of 22%**

In order to promote growth and investment, a new provision has been inserted in the Act with effect from April 1, 2019 which allows Indian companies to **pay income-tax at a reduced rate of 22%**, which were earlier taxed at a base rate of 30% plus applicable surcharge and cess (25% for companies which had a turnover less than approx. USD 60 million, excluding surcharge and cess). The reduced base rate of 22% is subject to condition that no tax holiday/exemption/incentive can be availed. Also, any losses carried forward from earlier years attributable such deductions cannot be set off while computing the income. It would be deemed to have been given full effect of. The effective tax rate for such companies will now be 25.17% inclusive of surcharge & cess. Such companies will not be required to pay Minimum Alternate Tax.

Companies opting for this relief cannot go back and claim any tax incentives in future. On the other hand, there is flexibility for the companies opting for the existing (higher) tax regime, to opt for the lower tax rates after the tax holiday/incentives are over.

Minimum Alternate Tax on companies opting to claim tax holidays/incentives, has been reduced from existing 18.5% to 15%.

2 **New Indian company, making fresh investment in manufacturing, have option to pay 15% income-tax**

To attract fresh investment in manufacturing and thereby providing boost to 'Make-in-India' initiative, a new provision has been inserted in the Act (with effect from April 1, 2019) which provides Indian companies, registered and set-up on or after October 1, 2019 making fresh investment in plant & machinery and engaged in manufacturing (not services), **an option to pay income-tax at a base rate of 15%.** This benefit is available to companies which do not avail any exemption/incentive and commence production on or before March 31, 2023. The effective tax rate for these companies shall be 17.01% inclusive of surcharge & cess. Such companies will also not be required to pay Minimum Alternate Tax.

3 **Enhanced surcharge introduced by the Finance (No.2) Act, 2019 not applicable on individual, HUF, AOP, BOI and AJP and to capital gains arising on sale of any security in the hands of FPIs**

To stabilise the flow of funds into the capital market, the enhanced surcharge introduced by the Finance (No.2) Act, 2019 will 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, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of individuals (BOI) and Artificial Juridical Person (AJP). Though, surcharge of 10% shall be applicable for domestic companies availing concessional base rate of 22% and newly formed manufacturing companies availing the reduced base rate of 15%.

The enhanced surcharge will also not be applicable to capital gains arising on sale of any security including derivatives, in the hands of Foreign Portfolio Investors (FPIs).

4 **Relief to listed companies that announced buy-back before July 5, 2019**

Listed companies that have made a public announcement of buy-back before July 5, 2019 will not be charged with buy-back tax on shares.

5 **Expansion of scope of CSR spending**

The scope of the mandatory 2% spending on Corporate Social Responsibility (CSR) has been expanded. The CSR funds may be spent on incubators funded by Central or State Government or any agency or Public Sector Undertaking of Central or State Government, and, on 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 that are aimed at promoting Sustainable Development Goals (SDGs).

**Our observations**

- Reduction in the tax rates for Indian companies (including Indian subsidiaries of foreign MNCs) is a welcome step.
- The reduced tax rates are applicable only for Indian registered companies and not to Limited Liability Partnerships (LLPs). While LLPs continue to enjoy exemption from Dividend Distribution Tax (DDT), going forward they will have to operate on a higher base tax rate.
- There has been a lot of talk in relation to abolition of the Dividend Distribution Tax (DDT) and speculations that even the Task Force Report on the Direct Tax Code has proposed abolishing this tax (and taxing it in the hands of recipient). We need to wait and watch if any relief will be brought about in this regard.
- Individual tax rates remain unchanged and the Government has been criticised for not lowering the same.
- No changes have been proposed in the tax rates for foreign companies (i.e. Permanent Establishments)

Please feel free to address any further questions or request for advice to: dmdadvocates@dumeds.com