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INDIAN GOVERNMENT ANNOUNCES KEY TAX PROPOSALS

Today (September 20, 2019) the Indian government has introduced the Taxation Laws (Amendment) Ordinance, 2019, to make certain amendments in the Income-tax Act 1961 (the "**IT Act**").

We have summarized below some of the key changes.

Option to pay a reduced corporate tax rate of 22%

In order to promote growth and investment, a new provision has been inserted in the IT Act, that will be effective from April 1, 2019, to allow any Indian company an option to pay income tax at the rate of 22%, subject to the condition that they will not avail any tax exemptions or tax incentives that are provided under the IT Act. **The effective tax rate for these companies will work out to 25.17% inclusive of surcharge and education cess**. It has also been proposed that such companies will not be required to pay minimum alternate tax ("**MAT**").

Manufacturing companies – option to pay income tax at the rate of 15%

In order to attract fresh investment in the manufacturing sector and to provide a boost to the "Make-in-India" initiative, a new provision has been added in the IT Act, that will be effective from April 1, 2019, to allow a new Indian company that is incorporated on or after October 1, 2019, making fresh investments in the manufacturing sector, an option to pay income tax at the rate of 15%. This benefit will be available to companies that do not avail any tax exemptions or tax incentives, and commences its production activities on or before March 31, 2023. **The effective tax rate for these companies works out to 17.01% inclusive of surcharge and cess**. It has also been proposed that such companies shall not be required to pay MAT.

Rate of MAT reduced from 18.5% to 15%

A company that does not opt for the concessional tax regime and avails the tax exemptions or tax incentives will have to continue to pay tax at the pre-amended rate of tax of 25% (applicable for those Indian companies set up on or after March 1, 2016 and

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that is engaged *inter alia* in the manufacturing or production of any article or thing and not claiming specific tax deductions) or 30% (for other Indian companies). The MAT rate has been reduced for such companies from the existing rate of 18.5% to 15%.

Tax on buyback of shares

Previously, unlisted companies were alone liable for a buyback distribution tax. With effect from July 5, 2019, the IT Act extended this obligation to listed companies as well. In order to provide relief to listed companies which have already made a public announcement of buyback of shares before July 5, 2019, it has been provided that the buyback distribution tax on buyback of shares in case of such companies shall not be charged.

Funds taxation

Currently, in the case of an individual, a Hindu Undivided Family, an association of persons or a body of individuals, whether incorporated or not, the IT Act contains an enhanced surcharge of 25% on taxable income exceeding INR2 crore (approximately US$0.29 million) up to INR5 crore (approximately US$0.73 million) and a surcharge of 37% on taxable all income exceeding INR5 crore (approximately US$0.73 million). Effectively, this increases the tax rates for individuals, trusts (including funds that are set up as trusts) and other associations of persons in the income slab exceeding INR2 crore (approximately US$0.29 million) up to INR5 crore (approximately US$0.73 million) to 39% and for those in the highest income slab to 42.74%. In order to stabilize the flow of funds into the capital market, the enhanced surcharge will not apply on the capital gains that arises on the sale of an equity share in a company or to a unit of an equity oriented fund or to a unit of a business trust that is liable for securities transaction tax in the hands of an individual, Hindu Undivided Family, association of persons, body of individuals and artificial juridical persons. The enhanced surcharge will also not apply to the capital gains arising on the sale of any security, including derivatives in the hands of foreign portfolio investors.

Our Comments

The Indian government's proposal to reduce the corporate tax rate for domestic companies is a positive long-term structural move to boost the economy and raise demand across sectors, especially manufacturing. Domestic companies have a lot to cheer about, and hopefully, foreign investments will see a pick up, both in the foreign direct investment and foreign portfolio formats.