

## Tax Hotline

October 07, 2019

### **CBDT ISSUES CLARIFICATION AROUND AVAILMENT OF ADDITIONAL DEPRECIATION AND MAT CREDIT FOR COMPANIES AVAILING LOWER RATE OF TAX**

- **CBDT issues follow up clarification to the Taxation Laws (Amendment) Ordinance, 2019 introduced earlier this year on September 20, 2019**
- **Clarifies that set off of brought forward losses on account of additional depreciation / brought forward MAT credit shall not be allowed for domestic companies availing a 22% tax rate under section 115BAA**
- **Allows the flexibility for the option under section 115BAA to be exercised after utilizing the brought forward losses on account of additional depreciation and brought forward MAT credit.**

Pursuant to the Taxation Laws (Amendment) Ordinance, 2019 ("Ordinance") on September 20, 2019, the Central Board of Direct Taxes ("CBDT") has by way of a circular ("Circular") clarified that set-off of brought forward losses on account of additional depreciation and brought forward MAT credit shall not be allowed in case of companies opting for taxation under the newly introduced section 115BAA of the (Indian) Income Tax Act, 1961 ("ITA").

The Ordinance, *inter-alia*, introduced a new Section 115BAA into the ITA, which provides domestic companies the option to be taxed at 22% (as opposed to the earlier rate of 25%<sup>1</sup> / 30%<sup>2</sup>). It restricts companies availing it from claiming set-off of brought forward losses on account of additional depreciation under section 35(1)(ii) of the ITA ("Additional Depreciation"). Further, the Ordinance provides that no Minimum Alternate Tax ("MAT") shall be applicable on companies availing section 115BAA. Please refer to our hotline [here](#) for a detailed analysis on the Ordinance.

Pursuant to the introduction of the Ordinance, it was not clear whether companies which were paying MAT and choose to be taxed at the lower rate under the new provisions, can use the MAT credit available with them. Clarification in this regard was sought by the industry and the CBDT has provided clarification by way of the Circular. The Circular has also provided clarification in respect of set off of brought forward losses on account of additional depreciation by companies which opt for taxability under section 115BAA. The clarifications are discussed below:

#### **SET-OFF OF BROUGHT FORWARD LOSSES ON ACCOUNT OF ADDITIONAL DEPRECIATION**

The taxpayer can avail the lower rate of tax under Section 115BAA of the ITA without claiming set-off of brought forward losses from any earlier assessment to the extent such carried forward loss is attributable to, *inter alia*, Additional Depreciation.

Additional Depreciation at the rate of 20% of the actual cost of such machinery or plant is claimable over and above the ordinary depreciation provided for under Section 32 of the ITA. Such depreciation is available on new machinery and plant (other than ships and aircraft) which has been acquired and installed after March 2005 if the taxpayer is engaged in (a) the business of manufacture or production any article or thing; or (b) in the business of generation, transmission or distribution of power.

While the language of the provision is clear, in order to ensure that there is no ambiguity whatsoever, the CBDT has clarified that companies availing benefit of lower tax under section 115BAA shall not be allowed to claim set-off of any brought forward losses on account of Additional Depreciation. They may however, as provided under Section 115BAA, exercise the option after setting-off of losses so accumulated.

#### **SET-OFF OF MAT CREDITS**

The Ordinance provides that MAT shall not be payable by companies availing benefit under section 115BAA. However, it does not provide for the treatment of MAT credit already available with the companies opting for taxation under the said section. The Circular clarifies that that brought forward MAT credit cannot be set off by companies availing benefit under section 115BAA of the ITA. It provides that the taxpayer can exercise the option of being taxed under Section 115BAA after utilizing the accumulated MAT credit against the regular tax payable under the taxation regime which existed prior to promulgation of the Ordinance.

#### **CONCLUSION**

While the clarifications are definitely useful, they do not provide any relief to the taxpayer. For those companies which have accumulated MAT credit, availing benefit under the new section would mean that they would have to forego the credit available. Clarifications to state that companies can first utilize the MAT credit / brought forward losses under regular provisions was not really required as the provision itself is clear in this regard.

— Afaan Arshad & Ashish Sodhani

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<sup>1</sup> 25% in the following scenarios: (i) if the turnover was less than INR 400 crores in FY 2017-18; or (ii) in case of companies which opted to be taxed under section 115BA.

<sup>2</sup> All other domestic companies

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