

ERGO

Analysing developments impacting business

CORPORATE TAX RATE REDUCED, BUT PAST TAX CREDITS DENIED?

3 October 2019

The Central Board of Direct Taxes (CBDT) – the apex body for administration of direct taxes in India – has issued a circular (Circular No. 29/2019 dated 2 October 2019) (Circular) clarifying that the companies which opt for the recently announced reduced corporate tax rate of 22% will not be eligible to claim set-off of brought forward (i) credit on account of Minimum Alternate Tax (MAT) paid in the past; and (ii) loss on account of additional depreciation.

Background

MAT Credit

Under the Income-tax Act, 1961 (IT Act), domestic companies are subject to MAT at the rate of 15% (recently reduced from 18.5%) of their adjusted accounting profits when tax payable under normal provisions is less than MAT. The excess of MAT over tax computed under normal provisions is available as a credit for 15 years and can be set off in the year(s) in which normal tax exceeds MAT and to the extent of such excess.

Additional depreciation

In case of manufacturing companies, depreciation in addition to normal depreciation at the prescribed rates (20% / 35% of the cost of plant and machinery) is allowed as a deduction while computing their taxable profits. If in a particular year, the additional depreciation cannot be set-off fully, it can be carried forward and set off in future years and there is no limitation period in this regard.

Recent corporate tax rate cuts

Recently, vide the Taxation Laws (Amendment) Ordinance, 2019 (Ordinance), the IT Act was amended to, *inter alia*, provide an option to domestic companies to avail a lower tax rate of 22% (25.17% inclusive of surcharge, cess) compared to the general corporate tax rate of 30% or 25% (based on a prescribed turnover criteria) provided such companies do not claim the specified incentives and deductions which, *inter alia*, include the deduction on account of additional depreciation. Further, companies opting for this reduced rate will not be subject to MAT. Our [Ergo](#) dated 20 September 2019 summarises these amendments.

As regards the unutilised additional depreciation, the language used in the Ordinance was not expressly clear as to whether the same can be carried forward and set-off by such companies. However, with respect to unutilised MAT credit, the Ordinance was

silent. This led to uncertainty and with respect to MAT credit, the following views were possible:

- Even if MAT is not applicable, MAT credit should still be available for set-off as it represents an asset which has accrued to a company over the past years and its utilisation should not be denied; and
- Since MAT is no longer applicable to the companies opting for the reduced rate, MAT credit should also lapse.

Circular

To address the aforesaid uncertainty, the Circular seeks to clarify the following with respect to the companies opting for the reduced corporate tax rate:

- the accumulated MAT credit shall not be available for set-off as MAT provisions shall not be applicable to such companies;
- the brought forward additional depreciation shall not be available for set-off; and
- since there is no timeline within which the option to be governed by 22% tax rate can be exercised, a domestic company having MAT credit or unabsorbed additional depreciation may first utilise the same and then, exercise the option.

Comments

For companies which have unexpired MAT credit and/ or unutilized additional depreciation, the Circular may have made the taste of the recently announced corporate tax rate reductions a bit sour. Such companies will now have to crunch numbers to evaluate whether (and when) to exercise the option, keeping in mind (i) the quantum of MAT credit and/ or unutilised additional depreciation, and (ii) the effective tax savings if the reduced rate is opted for.

The key issue which needs further deliberation is that whether the positions captured in the Circular are merely clarificatory in nature or are substantive changes to the legal position. The change in relation to the unutilised additional depreciation indeed seems clarificatory. Another important aspect is that circulars are binding on the tax authorities but not on the taxpayer. Hence, while this Circular may be reflecting the position that the income-tax department may wish to adopt, it is not binding on the taxpayers and unless a legislative amendment is brought about, the issues addressed in this Circular may continue to remain grey.

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