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Global Tax Alert

India passes Amendment Bill approving reduced tax rates for Indian companies

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Executive summary

On 11 December 2019, the President of India approved the *Taxation Laws (Amendment) Bill, 2019* (Amendment Bill) to repeal and replace the *Taxation Laws (Amendment) Ordinance, 2019* (Ordinance) passed by the Government in September 2019[1] which significantly reduced the corporate income tax rate for certain Indian companies.

Detailed discussion

The Ordinance provided for a major reduction in corporate income tax (CIT) rates for existing companies (22%)[2] and new manufacturing companies (15%),[3] subject to certain conditions. The Ordinance also implemented the withdrawal of the higher surcharge for non-corporate entities on certain capital market transactions,[4] and provided an exemption from the share buyback tax for listed Indian companies that publicly announced share buybacks on or before 5 July 2019 but had not completed the share buyback by that date.

The Amendment Bill, which has now become an Act (*Amendment Act*), is largely in line with the Ordinance, with the following key amendments:

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Existing Indian companies applying the 22% CIT rate

- Unused Minimum Alternate Tax credits from prior years will not be creditable against tax payable under the 22% CIT rate.
- The failure to comply with the conditions in any tax year will result in the denial of the 22% CIT rate for the tax year of failure and all subsequent tax years.

New Indian manufacturing companies applying the 15% CIT rate

- Certain businesses are excluded from the reduced CIT rate (e.g., computer software development, mining).
- Income derived from non-manufacturing activities will be taxed at 22%.[5]
- Short-term capital gains (from assets that are not depreciable for tax purposes) will be taxed at 22%.[6]
- Any profits which are deemed to be in excess of an arm's-length amount[7] will be taxed at 30%.[8]
- The failure to comply with the conditions in any tax year will result in the denial of the 15% CIT rate for the tax year of failure and all subsequent tax years, however companies can opt to apply the 22% CIT rate subject to certain conditions.

Reduced surcharge on capital market transactions for foreign portfolio investors (FPIs)

- The reduced surcharge applicable to capital market transactions undertaken by FPIs applies irrespective of the status of the FPI (including for individuals and artificial juridical persons).

As these amendments have the potential to limit the scope of the CIT rate reduction in a significant manner, critical evaluation of the *Amendment Act* by taxpayers is required.

Endnotes

1. See EY Global Tax Alert, *India reduces tax rates for Indian Companies*, dated 25 September 2019.
2. Effective tax rate of 25.17% including peak surcharge and cess.
3. Effective tax rate of 17.16% including peak surcharge and cess.
4. Announced on 24 August 2019.
5. Effective tax rate of 25.17% including peak surcharge and cess.
6. Effective tax rate of 25.17% including peak surcharge and cess.
7. Derived from transactions with parties having a close connection with the taxpayer.
8. Effective tax rate of 34.32% including peak surcharge and cess.

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