VOLUME 62,OCTOBER 2019

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THE NEWSLETTER

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NCLAT allows Group Insolvency under Insolvency and Bankruptcy Code (IBC)

In a significant ruling by the National Company Law Appellate Tribunal ("**NCLAT**") in the matter of ***Edelweiss Asset Reconstruction Company Limited vs Sachet Infrastructure Pvt Ltd,*** *[Company Appeal (AT) (Insolvency) No. 377 of 2019, pronounced on 20.09.2019],* NCLAT has allowed the Resolution Professional to conduct the resolution process of group companies on a consolidated basis under the Insolvency and Bankruptcy Code 2016 ("**IBC**") such that one consolidated resolution plan may be approved for all the group companies. NCLAT in ruling so has paved way for scenarios where several companies are inter-related in terms of their business. In the instant case, NCLAT allowed consolidation of resolution process of six (6) companies engaged in real estate business. Out of the six (6) companies, one, Adel Landmarks Limited, was a developer and the remaining five (5) were landowners in the same project that was to be developed by Adel Landmarks Limited. Considering that the land for the same real estate project was owned by five (5) different companies and the development was to be done by a sixth company, NCLAT found it to be a fit case to appoint a common Resolution Professional and to allow submission of a joint resolution plan for all six (6) companies. This is the second instance of consolidation of resolution processes of companies of same group, after 13 companies of Videocon Group were directed by NCLT Mumbai *vide* its order dated 08.08.2019 to be resolved on a consolidated basis under IBC. This ruling is significant for opening more avenues for swift resolution of distress in real estate sector where real estate projects are executed by multiple companies of the same group .

Constitution of GST Appellate Tribunal Held Unconstitutional by Madras HC

The High Court of Madras ("**Madras HC**") in the matter of ***Revenue Bar Association vs Union of India*** *[Writ Petition No. 24117 & 24118 of 2018]* held that composition of GST Appellate Tribunal under Section 109(3) and 109(9) consisting of one Judicial Member and two Technical Member one from Centre and other from State as unconstitutional. In the said case, the questions for consideration before the Hon'ble High Court were: (1) Whether composition of GST Appellate tribunal, wherein administrative members outnumber the judicial member, is violative of Article 14 and 50 of Constitution; (2) Whether exclusion of advocates from being considered for appointment as a Judicial Member in GST Appellate Tribunal, is violative of Ar-

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ticle 14 of the Constitution of India and (3) Whether Section 110 (b)(iii) of Central Good and Service Tax Act, 2017 ("**CGST Act**") which makes a member of the Indian Legal Service, eligible to be appointed as a Judicial Member of the appellate tribunal, contrary to the law laid down by the Supreme Court in ***Union of India vs R. Gandhi*** *[2010(11) SCC 1]*.

On the first question, the Madras HC referring to Article 50 and ***R. Gandhi case*** (*Supra*) held that there is need of an independent impartial tribunal as the cases coming before tribunal deals with adjudication of cases against the State. In such circumstances, to have a greater number of members who are expert members (not Judges) will raise a reasonable apprehension in the minds of the assessee that they might not get fair justice and that the decision making might be more oriented towards the State. Thus, composition of GST Appellate Tribunal under Section 109 and 110 of CGST Act is unconstitutional. On question no. (2), the HC held that even though Constitutional validity of Section 110 (1) (b) of CGST Act cannot be struck down on the ground of non-inclusion of advocates as being eligible for being considered for appointment as Judicial Member to the Appellate Tribunal, but the Madras HC recommended that Parliament should reconsider the issue regarding the eligibility of lawyers to be appointed as Judicial Members in the Appellate Tribunal. On question no. (3), the Madras HC held that the challenge to appointment of a person who is or has been a member of Indian Legal Service and has held a post not less than Additional Secretary for a period of three years is no longer res integra. The issue stands settled in ***R. Gandhi case*** (*Supra*), wherein it has been categorically stated that a person who has held a position under the Indian Legal service cannot be considered for appointment as judicial members. Thus, the Members of Indian Legal Service cannot be considered for appointment as Judicial Members and therefore, Section 110(1)(b)(iii) of CGST Act has been struck down as unconstitutional.

Limitation Act Applicable to Section 7 of IBC

In the case of ***Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd. & Anr.*** *[Civil Appeal No.4952 of 2019 decided on 18.9.2019*] three Judge Bench of the Supreme Court ("**Court**") presided over by Justice R F Nariman held that Article 62 of the Limitation Act, 1963 ("**Act**") which provides for suit to enforce payment of money secured by mortgage or otherwise charge upon immovable property would only apply to suits and not to 'an application' which is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and the same would fall only within the residuary entry which is Article 137 of Act. In the instant case, it was held that for the purpose of calculation of the limitation period, time begins to run on date of account being held as NPA. The Court further observed that Article 137 of the Act being a residuary article would apply on the facts of instant case, and as right to sue accrued only on and from 21.07.2011, three years having elapsed since then in 2014, the Section 7 application filed in 2017 is clearly time-barred. As per Article 137 of the Act, the limitation period is three years and it runs from the time when the right to apply accrues. The Court also referred to the Report of the Insolvency Law Committee on insolvency and bankruptcy and observed that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.

Changes in GST on Hospitality Industry

The rate of GST applicable on services provided by the hospitality industry under Heading 9963 as '*Accommodation, food and beverage services*' have recently been amended *vide* ***Notification No. 20/2019-CT(R) dated 30.09.2019*** ("**Notification**") w.e.f. 01.10.2019 to give effect to the recommendations of the GST Council given in their 37th Meeting on 20.09.2019. The new rates as per the Notification are summarized below:

The Notification also categorizes the hotels where the declared tariff value of any unit of accommodation is Rs. 7500 and above as '*specified premises*'. Further, restaurant services provided at such specified premises will also attract the rate of 18% GST. However, restaurant services at locations other than specified premises will attract 5% GST (without ITC). Similarly, the outdoor catering services (provided with or without renting of premises) will be charged at 5% GST (without ITC). However, if outdoor catering services are provided at or by any specified premises, or by a supplier located in specified premises, the rate of GST

Value of supply per unit (room) per day for accommodation	Old Rate	New Rate
Less than Rs. 1000 [under N. No. 12/2017-CT(R)]	Nil	Nil
Rs. 1,000 and above but less than Rs. 2,500	12%	12%
Rs. 2,500 and above but less than Rs. 7,500	18%	12%
Rs. 7,500 and above	28%	18%

applicable shall be 18%. Further, to remove any ambiguity, definitions for the terms '*hotel accommodation*', '*restaurant services*', '*outdoor catering*' and '*declared tariff*' have also been introduced by the Notification.

IBC Proceedings Maintainable when Company's Name Struck off from The Register of Companies

The National Company Law Appellate Tribunal, New Delhi ("**NCLAT**") in the case of ***Elektrans Shipping Pvt. Ltd. vs. Pierre D'silva & Anr.*** *[Company Appeal (AT) (Insolvency) No. 754 of 2019 decided on 12.09.2019*], held that an application filed under Sections 7 and 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") for initiation of Corporate Insolvency Resolution Process ("**CIRP**") is maintainable even if the name of the Company is struck off from the Register of Companies ("**ROC**"). The Appellant argued that once the name of the company is struck down from the ROC by the Registrar of the companies under Section 248 of Companies Act, 2013 ("**Companies Act**"), it is erroneous to continue the insolvency proceeding against that company. In order to decide the issue at hand, NCLAT relied upon the case of ***Mr. Hemang Phophalia vs. The Greater Bombay Co-operative Bank Limited and Anr***. *[Company Appeal (AT) (Insolvency) No. 732 of 2019]* wherein it was held following: (a) Section 248 of the Companies Act, in no manner affects the power of NCLT/NCLAT to wind up a company, the name of which has been struck off from the ROC; (b) under Section 248 of the Companies Act before removing Company from ROC, the registrar should first satisfy himself that sufficient provision has been made for realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations, within a reasonable time; (c) an appeal under Section 252 of the Companies Act which relates to Appeal to Tribunal against the Registrar's decision regarding the removal of name should be first transfer to NCLT to first check the status of the Company regarding the dues paid/payable to the creditors and its management; and (d) once the NCLT has admitted the application under Section 7 of the Code for insolvency proceed-

ing after checking the position of the company along with ex-management, than the name of the company would be deemed to have been restored in in terms of Section 252(3) of the Companies Act.

Remedies under Consumer Protection Act and RERA are Concurrent

The High Court of Delhi ("**Delhi HC**") recently in the case of ***Messrs M3M India Private Limited & Anr v. Dr Dinesh Sharma & Anr*** *[CM (M) 1244 of 2019 & CM APPL 38052-38053 of 2019 decided on 04.09.2019]* along with other connected matters, held that remedies available to homebuyers under the Consumer Protection Act, 1986 ("**CPA**") and the Real Estate (Regulation and Development) Act, 2016 ("**RERA**") are concurrent. This judgment allows flat purchasers aggrieved by errant developers to choose between redressal authorities established under the CPA or the RERA. The Delhi HC rendered the judgment while hearing the petitions filed by several real estate companies against an order passed by the National Consumer Disputes Redressal Commission ("**Commission**") wherein the Commission had held that the jurisdiction of the forums/commissions constituted under the CPA are concurrent with the remedies under RERA and the jurisdiction of the forums/commissions constituted under CPA is not ousted by RERA, particularly Section 79 of RERA thereof which provides that no civil court shall have jurisdiction over matters empowered to be decided by authorities under RERA.

The home buyers in the matter argued that the issue raised in these petitions had already been decided against the builders by the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. & Anr. vs. Union of India & Ors***., *[2019 SCC Online SC 1005]* where the Hon'ble Supreme Court held that remedies given to allottees of flat/apartments are concurrent, and such allottees are in a position to avail of remedies under CPA, RERA, as well as trigger the provisions of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). Per contra real estate developers, among other grounds argued that the issue involved in ***Pioneer (supra)*** was of the relationship between the remedies provided under IBC and RERA and that the question of inter-relationship between RERA and CPA was neither raised nor argued before the Hon'ble Supreme Court.

The High Court however opined that there is no warrant for limiting the scope that concurrent remedies are applicable only to cases where complaints under the CPA were instituted prior to RERA coming into force by reference of Section 71 of the RERA. Section 71 was used as an example of a parallel remedy and doesn't intend to reach a conclusion for only pending CPA complaints and not for ones instituted in future and thus, Delhi HC arrived at an unequivocal finding that remedies available under the CPA and RERA to the home buyers are concurrent and there is no ground for interference with the view taken by the Commission

Exclusion of Certain Persons from Applicability of Section 194N of the Income Tax Act, 1961

As per Section 194N of the Income Tax Act, 1961, tax is required to be deducted at source at the rate of 2% where any cash payment is made by a specified person to any person in excess of Rs. 1,00,00,000/- (Rupees One Crore Only). In this regard,

the Central Government after consultation with the Reserve Bank of India has excluded certain persons from applicability of Section 194N of the Income Tax Act, 1961 by virtue of the powers conferred upon them by clause (v) of the proviso to Section 194N of the Income Tax Act, 1961. In this regard, two notifications have been issued in the month of September, which are discussed herein below.

It is notified by the CG vide its ***Notification No. SO 3427 (E) [No. 70/2019 (F.No. 370142/12/2019-TPL (Part-I)], dated 20.09.2019*** that, the commission agent or trader who is operating under Agriculture Produce Market Committee (APMC) and is registered under any Law relating to Agriculture Produce Market of the concerned State shall be excluded from applicability of the aforesaid section on fulfillment of the necessary conditions. For availing the benefit of the said notification, the commission agent or trader must have intimated to the concerned banking company / co-operative society/ post office their account number through which they wish to make the cash withdrawal in excess of Rs. 1 crore, along with their PAN number and the details of the previous year. Further, they have to certify to the said banking company / co-operative society/ post office that the cash withdrawal so made are for the purpose of making payments to the farmers on account of purchase of agriculture produce. Furthermore, the said banking company / co-operative society/ post office must ensure that the commission agent or trader is duly registered with APMC along with the correctness of the PAN submitted by them. With regard to this, the banking company etc. must collect the necessary evidences and must place them on record.

Further CG *vide* its ***Notification No. SO 3356(E) [No. 68/2019 (F.No. 370142/12/2019-TPL)], dated 18.09.2019*** notified that, no tax will be required to be deducted where the cash is withdrawn from a separate bank accounts maintained by the Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's), where the sum is withdrawn by them for the purpose of replenishing the same in the Automated Teller Machines (ATM's) operated by such WLATMO's. However, the said proviso will be made applicable only if the WLATMO have furnished a certificate every month to the banking company certifying that the bank account of the CRA's and the franchise agents of the WLATMO's have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's The aforesaid notifications shall be deemed to have come into force w.e.f. 01.09.2019.

KEY TAKE AWAYS

- The payment of GST payment on securities lending service has been brought under reverse charge mechanism vide **Notification No. 22/2019–CT dated 30.09.2019** issued by CBIC.
- Service by way of grant of alcoholic liquor license against consideration in the form of license fee or application fee shall not be treated as supply of goods or supply of services as per **Notification No. 25/2019–CT dated 30.09.2019** issued by CBIC.
- The place of supply of services shall be the location of the recipient for supply of research and development services related to pharmaceutical sector as per Notification **No. 04/2019-IT dated 30.09.201**9 issued by CBIC.
- An exemption under GST has been granted to services provided by and to FIFA and its subsidiaries related to FIFA U-17 Women's World Cup 2020 and right to admission to the same vide **Notification No. 21/2019–Central Tax dated 30.09.2019** issued by CBIC.
- According to **Notification No. 22/2019–Central Tax dated 30.09.2019** issued by the CBIC, an option is to be given to registered authors to pay GST on royalty charged from publishers under forward charge and observe regular GST compliance
- The government has decided to create a Company Law Committee to look at recategorization of certain offences under the Companies Act as civil offences as well as review other provisions of the Companies Act and the Limited Liability Partnerships Act, 2008 vide **Order No. F. No. 2/1/2018-CL-V dated 18.09.2019** issued by the Ministry of Corporate Affairs.
- The Patent (Amendment) Rules, 2019 have been notified after seeking comments and feedback from the general public and relevant members *vide* **Notification No. G.S.R. 663(E) dated 17.09.2019** issued by the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry.
- The Department for Promotion of Industry and Internal Trade published the **Press Note Number 4 (of 2019 Series) dated 18.09.2019** which amends certain provisions of the Foreign Direct Investment policy of India and relaxes and clarifies the foreign direct investment norms for various sectors.
- By virtue of **Notification No. GSR 679 (E) [No. 69/2019 (F.NO. 370142/17/2019-TPL)]**, dated 20.09.2019 following assets will be allowed depreciation at a higher rate as follows w.e.f. 23.08.2019, if the said assets are acquired on or after the 23.08.2019 but before 01.04.2020 and are put to use before 01.04.2020:

  Motor cars which are not used in a business of running them on hire shall be allowed depreciation at the rate of 30% instead of 15%.

  Motor buses, motor lorries and motor taxis used in a business of running them on hire shall be allowed depreciation at the rate of 45% instead of 30%.

KNOWLEDGE CENTRE

Q1. What is PMLA?

PMLA refers to the Prevention of the Money Laundering Act, 2002.

Q.2. What are the objects of the PMLA?

PMLA has been enacted to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering.

Q.3. What is the offence of money laundering?

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.

Q.4. What is the punishment for committing the offence of money laundering?

Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 (three) years but which may extend to 7 (seven) years and shall also be liable to fine.

Q.5. What are proceeds of crime?

Proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

Q.6. Who is a reporting entity?

Reporting entity means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. Persons carrying on a designated business or profession includes carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino, Registrar or Sub-Registrar appointed by the Central Government, dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government, person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government, person carrying on such other activities as the Central Government may, by notification, so designate, from time-to time.

Q.7. What are the obligations of a reporting entity under PMLA?

A reporting entity is primarily responsible for identification, verification and maintaining records of its clients and thereafter submitting such records to the Director, Financial Intelligence Unit of India (FIU- IND) (hereinafter referred to as "**Director**").

Q.8. What is the period requirement to preserve and maintain the records or transactions under the PMLA?

As per PMLA, the records are to be maintained and preserved for a period of five (5) years from the date of transactions and client details related to identification of parties, business correspondences are to be maintained for 5 (five) years post termination of business relationship between the parties or closure of accounts, whichever is later.

Q. 9. What are the consequences of non-compliance of the provisions of PMLA by the reporting entities?

If during course of inquiry, the Director discovers that reporting entity or its designated director or any other employee has not complied with the obligations, the Director may impose fine on the reporting entity or its designated director on board or employee which shall not be less than Rs. 10,000/- (rupees ten thousand only) but may extend to Rs. 1, 00,000/- (rupees one lakh only) for each failure.

EDITORIAL

Key Amendments made by the Taxation Laws (Amendment) Ordinance, 2019 dated 20.09.2019

The Finance Minister has brought in certain key amendments in the Income-tax Act, 1961 and Finance (No. 02) Act, 2019 through **"The Taxation laws (Amendment) Ordinance, 2019"** ("**Ordinance**") issued on 20.9.2019. The objective of the Government behind introducing the said amendments is to boost up the economy and combat with the running slowdown. These amendments along with the other measures already taken by the Government regularly are steps to make India, a globally competitive hub. The salient features of the Ordinance are as under:

Reduced Tax Rate for Certain Domestic Companies

- A new section 115BAA has been inserted to provide relief in form of concessional rate of Income Tax @ 22% (plus surcharge @10% and Cess @4%) to certain **Domestic companies** which comply with the following conditions-

  ◊ Profit linked deductions, exemption and incentives available under specified sections of the Income-tax Act, 1961 namely, Section 10AA, 32AD, 33AB, 33ABA, 35(1)(ii), 35(1)(iia), 35(1)(iii), Section 35(2AA), Section 35(2AB), 35AD, 35CCC, 35CCD and Part C of Chapter VI-A other than Section 80JJAA shall not be availed by the said domestic company.

  ◊ Set-off of any losses carried forward from earlier assessment years shall not be available if such losses were due to such profit linked deductions or incentives schemes.

  ◊ Benefit of accelerated depreciation u/s 32(1)(iia) shall not be available however, normal depreciation can be claimed u/s 32.

- Once assessee opts to exercise the benefit of reduced tax rate under this section, it can't be withdrawn in the subsequent years.

- Also, no MAT liability will be imposed on the companies which have opted for this option.
  [w.e.f. 1.4.2020 (AY 2020-21 onwards)]

Special Provision for New Manufacturing Domestic Companies

- A new section 115BAB has been inserted to provide relief in form of concessional rate of Income Tax @ 15% (plus surcharge @10% and Cess @4%) to certain **Domestic Manufacturing companies** which comply with the following conditions –

  ◊ Such company has been set-up and registered on or after 01.10.2019 and has commenced manufacturing on or before 31.3.2023.

- ◊ Such company is not formed by way of splitting up or reconstruction of a business already in existence.
- ◊ Such company does not use any plant or machinery previously used for any purpose more than 20% of its total value of Plant or machinery with certain exclusions.
- ◊ Such company does not use any building which was previously used as a Hotel or convention centre.
- ◊ Profit linked deductions, exemption and incentives available under specified sections of the Income-tax Act, 1961 namely, Section 10AA, 32AD, 33AB, 33ABA, 35(1)(ii), 35(1)(iia), 35(1)(iii), Section 35(2AA), Section 35(2AB), 35AD, 35CCC, 35CCD and Part C of Chapter VI-A other than Section 80JJAA shall not be availed by the said domestic company.
- ◊ Set-off of any losses carried forward from earlier assessment years shall not be available if such losses were due to such profit linked deductions or incentives schemes.
- ◊ Benefit of accelerated depreciation u/s 32(1)(iia) shall not be available however, normal depreciation can be claimed u/s 32.

- Once assessee opts to exercise the benefit of reduced tax rate under this section, it can't be withdrawn in the subsequent years.

- Also, no MAT liability will be imposed on the companies which have opted for this option.
  [**w.e.f. 1.4.2020 (AY 2020-21 onwards)]**

Consequential Amendment in Section 115BA

- Section 115BA provides for concessional tax rate of 25% in case of certain domestic manufacturing companies incorporated on or after 01.03.2016 which opts for the said concessional rate subject to fulfillment of various conditions. As per the existing provisions, the option once exercised u/s 115BA cannot be withdrawn subsequently. A Proviso has been inserted by the Ordinance in the said section to provide that if an assessee opts for rate of taxation as per Section 115BAB then the option u/s 115BA may be withdrawn.
  [w.e.f. 1.4.2020 (AY 2020-21 onwards**)]**

MAT Liability reduced on Existing Companies

- The Ordinance also provides benefit to the existing companies not covered within the scope of the above two newly inserted provisions, by reducing the MAT liability. MAT rate for such companies has been reduced from 18.5% to 15%. The effective rate of MAT has been reduced from 21.55% to 17.47%.
  [**w.e.f.** 1**.4.2020 (AY 2020-21 onwards)]**

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3 'majority stake' means;-
(i) holding more than one-half of the equity share capital in the body corporate; or
(ii) holding more than one-half of the voting rights in the body corporate; or
(iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;'

Increased Surcharge on Capital Gain from Transfer of certain Securities removed

- The Ordinance also rolls back the increased surcharge imposed on Foreign Institutional Investors (FIIs) on Capital gain income arising on transfer of securities. Earlier through Finance (No. 02) Act, 2019, surcharge on FIIs was increased to 25% in case total income of the said FIIs exceed Rs.2 Crores and 37% in case total income exceeds Rs.5 Crores. The said increased surcharge is now taken back in such a way that maximum surcharge shall be 15% in case of FIIs if their total income exceeds Rs.1 Crore.

- The Ordinance also removes the enhanced surcharge imposed by the Finance (No. 02) Act, 2019 on Capital Gain income arising on transfer of Equity shares or unit of an equity -oriented fund or a unit of a Business trust which are subject to Securities Transaction Tax (STT). Surcharge on such income shall not exceed 15%.

Other Amendments

- The Ordinance also provides benefits to the listed companies which have made public announcement of buy-back of shares before 05.07.2019. Through this amendment, such companies shall not be liable to pay additional income tax @20% on their distributed Income.

- The Ordinance also amends Section 92BA which defines "Specified Domestic Transaction" and includes the transaction entered by the company covered under newly inserted section 115BAB. Thus, the transactions of such companies covered by Section 115BAB will be subject to the provisions of domestic transfer pricing.
  [w.e.f. 01.04.2020 (AY 2020-21 onwards)]

Effective Rate of Income Tax in case of Domestic Companies –

Post the above amendments, the effective tax rate in case of domestic companies applicable w.e.f. A.Y. 2020-21 has been summarized in the below table- **(Rates in %)**

S. No.	Categories	Tax Rate	Sur-charge	Cess	Effec-tive Tax Rate	Effec-tive MAT Rate
1	Domestic Companies which exercise option of concessional rate u/s 115BAA subject to fulfill-ment of specified conditions	22.00	10.00	4.00	25.17	0.00
2	Domestic Manufacturing Companies set-up and registered on or after 01.10.2019 and which opts for concessional rate u/s 115BAB	15.00	10.00	4.00	17.16	0.00
3	Existing Domestic Manufacturing Companies in-corporated before 01.10.2019 which opted for con-cessional rate u/s 115BA					
(i)	Total Income below Rs.1 Crore	25.00	0.00	4.00	26.00	15.60
(ii)	Total Income exceeds Rs.1 Crore but does not exceed Rs.10 Crore	25.00	7.00	4.00	27.82	16.69
(iii)	Total Income exceeds Rs.10 Crore	25.00	12.00	4.00	29.12	17.47
4	Domestic Companies which are not covered under S.No. 1, 2 & 3 above and whose total turnover in PY 2017-18 doesn't exceed Rs. 400 Crores					
(i)	Total Income below Rs.1 Crore	25.00	0.00	4.00	26.00	15.60
(ii)	Total Income exceeds Rs.1 Crore but does not exceed Rs.10 Crore	25.00	7.00	4.00	27.82	16.69
(iii)	Total Income exceeds Rs.10 Crore	25.00	12.00	4.00	29.12	17.47
5	Domestic Companies which are not covered under S.No. 1, 2 & 3 above and whose total turnover in PY 2017-18 exceeds Rs. 400 Crores					
(i)	Total Income below Rs.1 Crore	30.00	0.00	4.00	31.20	15.60
(ii)	Total Income exceeds Rs.1 Crore but does not exceed Rs.10 Crore	30.00	7.00	4.00	33.38	16.69
(iii)	Total Income exceeds Rs.10 Crore	30.00	12.00	4.00	34.94	17.47

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1 'It is important to note that an amendment has been brought in Section 115BA to provide that if an assessee opts for rate of taxation as per Section 115BAB then the option u/s 115BA may be withdrawn. However, the said amendment appears to be giving no effect as Section 115BAB shall be applicable only in case of manu-facturing companies set up and registered on or after 01.10.2019. Hence, the said companies have not exer-cised any option u/s 115BA till date and will be obviously exercising option u/s 115BAB w.e.f. AY 2020-21 on account of being specifically governed by this section and the benefit of reduced tax rate of 15%.

Further, a question might arise that whether an existing domestic manufacturing company which has been set-up and registered on or after 01.03.2016 and is governed by Section 115BA, can now opt for reduced rate of tax of 22% as provided in newly introduced Section 115BAA from AY 2020-21 onwards. In this regard, a view can be taken that the said company shall continue to be liable to pay income tax @ 25% on account of operation of first proviso to Section 115BA(4) which provides that option once exercised under the said sec-tion cannot be withdrawn subsequently. Thus, the said company will not be able to opt for concessional rate of tax of 22% under newly introduced Section 115BAA as corresponding amendment has not been brought currently in Section 115BA to enable them to withdraw the option already exercised u/s 115BA. However, another view can be taken that any company who has opted for 115BA can opt for option u/s 115BAA w.e.f. AY 2020-21 as the new section does not impose any such restrictions for existing companies availing option u/s 115BA.

In light of the above-discussed proviso actually inserted in Section 115BA by the Ordinance and the aforesaid two views in case of companies availing option u/s 115BA, in our view, there appears to be an apparent drafting error in the said proviso inserted by the Ordinance wherein intention was to make a reference to Section 115BAA but reference has been actually made to Section 115BAB. Accordingly, a clarification in this regard may be sought from the Government to remove the unintended drafting error.

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