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Newsflash: Circular 29/ 2019 - Clarification on claim of Set-Off Of Losses & MAT Credit Under Newly Inserted S. 115BAA of Income-tax Act, 1961

1.0 Background

The President of India promulgated the Taxation Laws (Amendment) Ordinance 2019 on 20th September 2019 which inserted new sections 115BAA and 115BAB in the Income-tax Act, 1961 ('IT Act'). The above section provided for concessional tax rates and relief from Minimum Alternate Tax ('MAT') under section 115JB in case of companies opting for section 115BAA/ 115BAB. Various stakeholders made representations to the Central Board of Direct Taxes ('CBDT') seeking clarification on two important aspects related with section 115BAA as under:

- Allowability of brought forward loss on account of additional depreciation.
- Availability of accumulated MAT credit of earlier years for set off in the absence of MAT provisions.

The CBDT vide Circular No. 29/2019 dated 2nd October 2019 clarified that Companies opting for section 115BAA shall not be allowed to claim set off of any brought forward loss on account of additional depreciation and MAT credit shall also be not available.

2.0 Impact

The CBDT has clarified as regards allowability of brought forward loss on account of additional depreciation, it may be noted that section 115BAA(2)(i), provides that the total income shall be computed without claiming any deduction under section 32(1)(iia) (i.e. additional depreciation). Further, section 115BAA(2)(ii) provides that total income shall be computed without claiming set off of any loss carried forward from any earlier assessment year if the same is attributable to depreciation.

Therefore, **a domestic company which would exercise option for availing benefit of lower tax rate under section 115BAA shall not be allowed to claim set-off of any brought forward loss on account of additional depreciation for an Assessment Year** for which the option has been exercised and or any subsequent Assessment Year.

Further, CBDT has clarified that, as there is no time line within which option under Section 115BAA can be exercised, a domestic company having brought forward losses on account of additional depreciation may, if it so desires, exercise the option after set off of the losses so accumulated.

As regards allowability of brought forward MAT credit, it may be noted that as the provisions of Section 115JB relating to MAT itself shall not be applicable to the domestic company which exercise option under section 115BAA, **it is clarified that the tax credit of MAT paid by the domestic company exercising option under section 115BAA of the Act shall not be available consequent to exercising of such option.**

Similarly it is also clarified that, as there is no time line within which option under section 115BAA can be exercised, a domestic Company having credit of MAT may, if it so desires, exercise the option after utilising the said credit against the regular tax payable under taxation regime existing prior to promulgation of the Ordinance.

3.0 Next steps and our Comments

In the view of above clarifications, any company which is contemplating to avail the benefit of section 115BAA needs to critically examine the taxability under existing provisions vis-à-vis new tax ordinance, particularly if such company is historically paying taxes under MAT and carrying MAT credit in the books of accounts and tax returns.

There may be situations wherein tax arbitrage provided by new regime may not be available in comparison to existing provisions depending on quantum of MAT credit available, time limit available to claim MAT credit, operational aspect and taxability in near future years etc.

Similarly companies having brought forward losses on account of claiming additional depreciation should also analyse if it is beneficial to shift to the new concessional tax rate.

Companies need to analyse the positions on proactive and timely manner before opting for new ordinance as once such option is exercised, it would be applicable for subsequent years as well and cannot be withdrawn. Further, the company needs to exercise option before due date for filing return u/s 139(1) for the assessment year.

As the provisions of section 115BAA are applicable for Financial year 2019-20 and onwards, any advance tax payment for the current year should be based on the analysis of tax implication under the existing tax provisions vis-à-vis new tax ordinance.

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This newsflash is general in nature. In this newsflash, we have summarized the clarification issued by CBDT by way of circular no. 29/2019 regarding claim of set-off of losses & MAT credit under newly inserted S. 115BAA of Income-tax Act, 1961. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

3 October 2019

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