

The Taxation Laws (Amendment) Ordinance, 2019 and Survey of Corporate Selection of option

Analysis of Results published by NIFTY 50 companies



Foreword

Change is inevitable. Tax Regime and Financial reporting in India is no different. The government has introduced a favorable tax regime for new manufacturing companies. The Taxation Laws (Amendment) Ordinance, 2019 passed on 20 September 2019 has inserted Section 115BAB offering a low tax rate of 15% (plus surcharge and cess) to new manufacturing companies and Section 115BAA with tax rate of 22% for domestic companies with surrender of specified deductions/ incentives.

No minimum alternate tax (MAT) would be applicable in either of these options. Companies that do not opt for the concessional tax rates will continue to enjoy the benefit of such specified deductions/ incentives, and where applicable, be subject to MAT at 15%. The options are explained below:

(a) Corporate Tax Rate @22% for all Domestic Companies:

As per section 115BAA, all domestic companies shall have an option to be taxed at the rate of 22 percent (plus applicable surcharge and cess) from the fiscal year 2019-20, provided such companies do not avail specified exemptions/ incentives. Surcharge at the rate 10 percent shall be levied. Accordingly, the effective tax rate for Companies opting to pay tax under section 115BAA of the IT Act shall be 25.168 percent.

The Ordinance further clarifies that companies who do not wish to avail this concessional rate immediately, can opt for the same after expiry of their exemptions/incentives. However, once a company opts to be governed by section 115BAA of the IT Act, it cannot be subsequently withdrawn.

(b) Corporate tax rate reduced to 15 percent for new manufacturing Companies:

As per section 115BAB, reduced tax rate of 15 percent (plus applicable surcharge and cess) shall be applicable to manufacturing companies fulfilling following conditions:

- The Company has been set-up and registered on or after 1 October 2019 and has commenced manufacturing on or before 31 March 2023
- The Company is not formed by splitting up, or the reconstruction, of a business already in existence. Certain relaxation is provided on applicability of this condition.
- The Company does not use any machinery or plant previously used for any purpose. Certain relaxation is also provided on applicability of this condition.
- The Company is not engaged in any business other than business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.
- The Company does not avail specified exemptions/ incentives.

The reduced tax rate shall be at the option of the taxpayer. However, once the taxpayer opts to be governed by section 115BAB of the IT Act, it cannot be subsequently withdrawn. Surcharge at the rate 10 percent shall be levied. Hence, the effective tax rate for Companies opting to pay tax under section 115BAB of the IT Act shall be 17.16 percent. Companies opting for reduced rate under section 115BAB of the IT Act shall be exempted from MAT.

Due to this, the following various options of tax rates are available for corporates based on the conditions as specified:

Particulars	Section 115BA	Section 115BAA	Section 115BAB	Others
Applicable from	AY 2017-18	AY 2020-21	AY 2020-21	-
Type of company	Domestic company	All domestic	Domestic company	Any domestic

	engaged in manufacturing/ Production	companies	engaged in manufacturing/ production	company
Eligibility (start date)	Set up and registered on or after 1 March 2016	No specific requirement	Set up and registered on or after 1 October 2019 (manufacturing to commence by 31 March 2023)	-
Basic tax rate	25%	22%	15%	25%/30%
Surcharge	7%/12%	10%	10%	7%/12%
Cess	4%	4%	4%	4%
Applicability of MAT	Yes [15%]	Not applicable	Not applicable	Yes[15%]
SDT provisions	Not applicable	Not applicable	Applicable	Applicable
Restriction for entities formed by restructuring/use of old plant & machinery/ use of building earlier used as hotel or convention centre	No	No	Yes	-

As per Indian Accounting Standard (Ind AS) – 12 Income Taxes, Current tax liabilities (assets) and Deferred tax liabilities (assets) shall be measured using the tax rates (and tax laws) that have been enacted or substantively enacted by the end of the reporting period.

Thus, the selection of tax rate option by the company may have material impact on the financials of the company. The disclosure thereof will provide the critical information to investors and stakeholders for understanding and analysis.

To understand the selection of the option and the type of disclosures made by the corporates, the survey of Quarter ended September 2020 results of Nifty 50 companies were carried out that provides important insights into the magnitude of change as well as challenges.

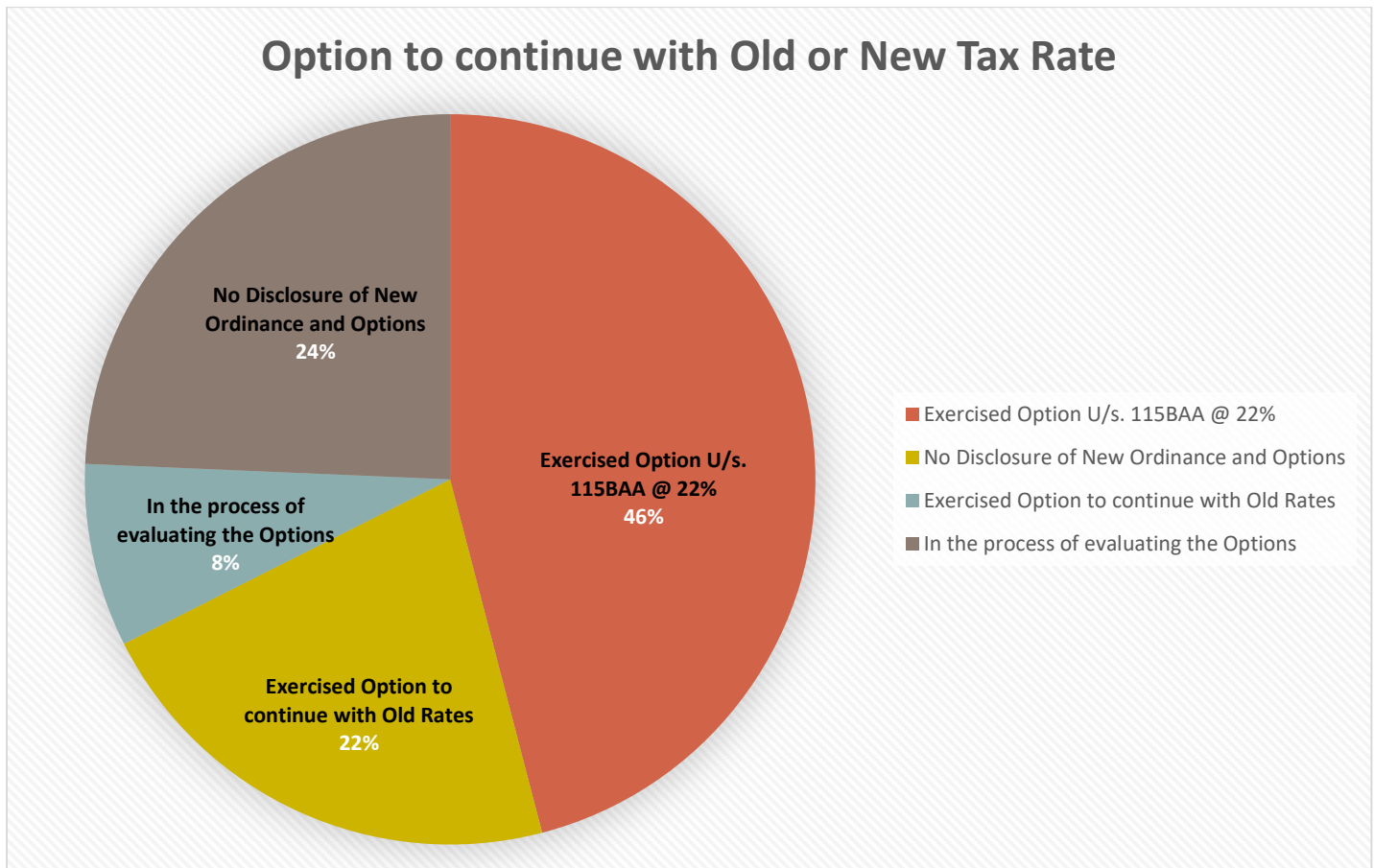
We believe this survey would help the Corporates in making decision of option selection and disclosure thereof in financial results. This will also be useful to professional, students and researchers in understanding the change and its impact.

Thank you.

NJP Advisors Pvt. Ltd.
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Analysis of NIFTY – 50 companies related to option selection and disclosure of The Taxation Laws (Amendment) Ordinance, 2019.

We have evaluated first published Ind AS results for the Quarter ended 30th Septmebr 2019 of NIFTY 50 companies. Out of 50 companies, a survey is conducted for 37 companies excluding Banking/NBFC. The list of companies considered for survey is provided in Appendix. The following chart provides a snapshot of Option selected by Corporates and Disclosure for “The Taxation Laws(Amendment) Ordinance, 2019”.



29 companies have provided disclosure in notes to results relating to “the Taxation Laws(Amendment) Ordinance, 2019”. The disclosure of few companies are reproduced below for your reference.

Extract of Disclosures relating to The Taxation Laws (Amendment) Ordinance 2019 in Published Financial Results

Note of accounts disclosures in financials results:

1. Pursuant to the Taxation Law (Amendment) Ordinance, 2019 ('Ordinance') issued by Ministry of Law and Justice (Legislative Department) on 20 September 2019 which is effective 01 April 2019, domestic companies have the option to pay corporate income tax rate at 22% plus applicable surcharge and cess ('New tax rate') subject to certain conditions. The Company has made an assessment of the impact of the Ordinance and decided to continue with the existing tax structure until utilisation of accumulated minimum alternative tax (MAT) credit.

However, in accordance with the accounting standards, the Company has also evaluated the outstanding deferred tax liability, and written back an amount to the extent of Rs. 2,150 crores to the Statement of Profit and Loss. This is arising from the re-measurement of deferred tax liability that is expected to reverse in future when the Company would migrate to the new tax regime.

(Source: Sept'19 Quarterly result of Cipla Limited)

2. "In pursuance to Section 115BAA of the Income Tax Act, 1961 announced by Government of India through Taxation Laws (Amendment) Ordinance, 2019, Corporation has an irrevocable option of shifting to a lower tax rate and simultaneously forgo certain tax incentives including loss of the accumulated MAT Credit. The Corporation has not exercised this option for current period due to unutilized MAT Credit available in the books. The Corporation continues to recognize the taxes on income for the quarter and half year ended 30th September 2019 as per the earlier provisions."

(Source: Sept'19 Quarterly result of Bharat Petroleum Corporation Limited)

3. The Company has computed the tax expense of the current financial year as per the tax regime announced under section 11513AA of the Income Tax Act, 1961. Accordingly, (a) the provision for current and deferred tax has been determined at the rate of 25.17%, (b) the deferred tax assets and deferred tax liabilities as on April 1, 2019 have been restated at the rate of 25.17% and (c) the unutilised credit for minimum alternate tax as on April 1, 2019 has been written-off. As a result, the tax expense for the quarter and six months ended September 30, 2019 is higher by 7 206.67 crore.

(Source: Sept'19 Quarterly result of Larsen & Toubro Ltd.)

4. The Company has chosen to exercise the option of lower tax rate of 25.17% (inclusive of surcharge and cess) under section 115BAA of the Income Tax Act, 1961 as introduced by the Taxation Laws (Amendment) Ordinance 2019. The full impact of this change has been recognized in tax expense for the quarter and six months ended 30th September, 2019. This has resulted in reversal of current tax and deferred tax expense of Rs 2.80 crores and Rs 24.20 crores respectively accrued in quarter ended 30th June, 2019 and reversal of deferred tax expense of Rs 107.60 crores on account of remeasurement of deferred tax liability as at 31st March 2019.

(Source: Sept'19 Quarterly result of Asian Paints Ltd.)

Appendix – List of companies covered in Survey

There are fifty companies in Nifty 50 index of NSE. Out of fifty, thirteen companies are related to Banking and NBFC business. We have not considered Banking and NBFC companies in Survey.

List of companies included in the survey:

Sr No	Company Name	Sr No	Company Name
1	ITC Ltd.	20	Adani Ports and Special Economic Zone Ltd.
2	Asian Paints Ltd.	21	Indian Oil Corporation Ltd.
3	Larsen & Toubro Ltd.	22	Cipla Ltd.
4	HCL Technologies Ltd.	23	Hindalco Industries Ltd.
5	Nestle India Ltd.	24	Eicher Motors Ltd.
6	NTPC Ltd.	25	JSW Steel Ltd.
7	UltraTech Cement Ltd.	26	Bharti Infratel Ltd.
8	Titan Company Ltd.	27	Zee Entertainment Enterprises Ltd.
9	Sun Pharmaceutical Industries Ltd.	28	GAIL (India) Ltd.
10	Power Grid Corporation of India Ltd.	29	Tech Mahindra Ltd.
11	Bajaj Auto Ltd.	30	Maruti Suzuki India Ltd.
12	Dr. Reddy's Laboratories Ltd.	31	Mahindra & Mahindra Ltd.
13	Oil & Natural Gas Corporation Ltd.	32	Wipro Ltd.
14	Bharat Petroleum Corporation Ltd.	33	Hindustan Unilever Ltd.
15	Coal India Ltd.	34	Reliance Industries Ltd.
16	Tata Steel Ltd.	35	Infosys Ltd.
17	Hero MotoCorp Ltd.	36	Bharti Airtel Ltd.
18	Grasim Industries Ltd.	37	Tata Consultancy Services Ltd.
19	UPL Ltd.		

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