



## CBDT notifies Foreign Tax Credit rules

The Central Board of Direct Taxes (CBDT) had set-up a committee to suggest the methodology for grant of Foreign Tax Credit (FTC). After due consideration of the issues raised by various stakeholders, the committee submitted its report. Subsequently, CBDT had issued draft rules<sup>1</sup> for the grant of FTC inviting comments and suggestions on the same.

Recently, CBDT has issued a Notification<sup>2</sup> introducing new rule<sup>3</sup> in the Income-tax Rules, 1962 (the Rules) with respect to FTC that shall come into effect from 1 April 2017. Key aspects of new rule are summarised as follows:

- The resident taxpayer shall be allowed FTC of any foreign tax paid in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.
- In a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, the credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.
- The 'foreign tax' means –
  - In respect of a country or specified territory with which India has entered into a tax treaty under Section 90 or 90A of the Income-tax Act, 1961 (the Act), the tax covered under the said tax treaty.
  - In respect of a country or specified territory with which India has not entered into a tax treaty under the Act, the nature of income-tax referred to in Section 91<sup>4</sup> of the Act.
- FTC shall be available against the amount of tax, surcharge and cess payable under the Act but not in respect of any sum payable by way of interest, fee or penalty.
- FTC shall not be available in respect of any amount of foreign tax or part thereof which is disputed by the taxpayer.
- The credit of disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India if the taxpayer within six months from the end of the month in which the dispute is finally settled, furnishes evidence of settlement of dispute and an evidence to the effect that the liability for payment of such foreign tax has been discharged by him and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.
- FTC shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory and given effect to in the following manner:
  - FTC shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income. However, in case the foreign tax paid exceeds the amount of tax payable in accordance with the tax treaty, such excess shall be ignored.

<sup>1</sup> F. No. 142/24/2015-TPL, dated 18 April 2016

<sup>2</sup> No. 54/2016, dated 27 June 2016

<sup>3</sup> Rule No. 128 introduced in the Income-tax Rules, 1962

<sup>4</sup> Clause (iv) of Explanation to Section 91 of the Act – The expression 'income tax' in relation to any country includes any excess profits tax or business profits tax charged on the profits by the government of any part of that country or a local authority in that country

- FTC shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.
- In the case where any tax is payable under the provisions of Minimum Alternate Tax (MAT) or Alternate Minimum Tax (AMT) under the Act, the credit of foreign tax shall be allowed against such tax in the same manner as is allowable against any tax payable under the provisions of the Act.
- Where the amount of FTC available against the tax payable under the provisions of MAT/AMT, exceeds the amount of tax credit available against the normal provisions, then while computing the amount of MAT/AMT credit in respect of the taxes paid under MAT/AMT provisions, as the case may be, such excess shall be ignored.
- FTC shall not be allowed unless the following documents are furnished by the taxpayer:
  - A statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67<sup>5</sup> and verified in the manner specified therein.
  - Certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the taxpayer-
    - from the tax authority of the country or specified territory outside India or
    - from the person responsible for deduction of such tax or
    - signed by the taxpayer.
  - The statement furnished by the taxpayer shall be valid if it is accompanied by-
    - an acknowledgment of online payment or bank counter foil or challan for payment of tax where the payment has been made by the taxpayer.
    - proof of deduction where the tax has been deducted.
- The statement of income and certificate in Form No.67 shall be furnished on or before the due date specified for furnishing the return of income under Section 139(1) of the Act, in the manner specified for furnishing such return of income.
- Form No.67 shall also be furnished in a case where the carry backward of loss of the current year results in a refund of foreign tax for which credit has been claimed in any earlier previous year or years.
- The statement in Form No. 67 shall include the following details:
  - Name of the taxpayer
  - PAN
  - Address
  - Assessment Year
  - Details of income from a country or specified territory outside India and FTC claimed shall include the following:
    - Name of the country/ specified territory
    - Source of income
    - Income from outside India
    - Tax paid outside India
    - Tax payable on such income under normal provisions in India
    - MAT/AMT payable on such income
    - Credit claimed under the tax treaty
    - Credit claimed under Section 91 of the Act
    - Total foreign tax credit claimed
  - Refund of foreign tax claimed, if any, in any prior accounting year as a result of carry backward of losses. The accounting year to which such loss pertains and the accounting year(s) in which set off of carry backward of loss has been undertaken.
  - Credit for any foreign tax claimed if any, which is under dispute including the amount of such disputed tax.
- For the purposes of this rule 'telegraphic transfer buying rate' shall have the same meaning as assigned to it in Explanation<sup>6</sup> to Rule 26 of the Rules.

<sup>5</sup> Statement of income from a country or specified territory outside India and FTC

<sup>6</sup> For the purpose of this Rule 'telegraphic transfer buying rate' in relation to foreign currency means the rate or rates of exchange adopted by the State Bank of India, for buying such currency having regard to the guidelines specified from time to time by Reserve Bank of India for buying such currency where such currency is made available to that bank through a telegraphic transfer

## Our comments

Continuing the recent trend of clarifying various issues with a view to provide clarity and certainty, CBDT has now notified FTC rules by modifying recently introduced draft rules. These rules clarify the nature and conditions for the availability of FTC to the taxpayers and provide guidance to claim FTC in India.

Draft rules did not specify reporting of carry back of losses. However, new FTC rules specify reporting of carry backward of losses of the current year whereby it results in a refund of foreign tax for which credit has been claimed in any earlier previous year or years. FTC rules also provide a guideline for granting tax credit if and when the tax dispute in the foreign country is settled against the taxpayer. It further provides that where income on which foreign taxes are paid is reflected in multiple years, the credit of taxes shall be allowed proportionately. Relaxation has been made in the documentation requirement and self-certification supported by proof of payment has now been accepted as the basis of payment of foreign taxes.

While some of the suggestions of the stakeholders have been accepted, the rules do not deal with a few expectations. The taxpayers expectation to provide an option to claim the credit for all overseas tax payment on an aggregate basis has not been accepted. As against that CBDT has adopted the source by source approach which may increase the compliance burden as well as results into the lesser availability of credit. Some of the tax treaties which India has entered into allows tax sparing credit. However, FTC rules do not deal with the methodology of allowing tax sparing credit. FTC rules are silent on the methodology of allowing credit due to the difference in the characterisation of income between India and other country. Further, no clarity has been provided on the availability of tax credit for state taxes paid in a foreign jurisdiction. It would also be interesting to see whether the restriction on MAT/AMT credit will come in conflict with the provisions of the Act/tax treaty.



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