
Central Board of Direct Taxes (CBDT) notifies rules for grant of Foreign Tax Credit (FTC)

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**Background:**

Sections 90 and 90A of the Income-tax Act, 1961 (the Act) provides for relief from double taxation of income in India if there exists a double taxation avoidance agreement (DTAA) between India and a foreign country/specified territory. Typically, DTAA entered into by India provide for availability of credits of foreign taxes with a view to afford relief from double taxation.

Similarly, section 91(1) of the Act provides for unilateral relief in respect of taxes paid on the income arising in a country with which India has not concluded a DTAA. This section provides for a credit on doubly taxed income, at the Indian rate of tax or the rate of tax of the other country, whichever is lower.

Apart from the above, there are no provisions in the Act or the Rules that deal with the detailed aspects

of the availability and claims for foreign tax credits. The First Report of the Tax Administrative Reform Commission¹ had recommended that the CBDT come out with clear guidelines in respect of availing FTC. This led to the insertion of Section 295(2)(ha) by the Finance Act, 2015 which empowered the CBDT to prescribe rules for granting relief under the Act in respect of foreign taxes paid.

Subsequently, the CBDT released the draft FTC rules on 18 April 2016 and comments from stakeholders and general public were invited by 2 May 2016. After considering the comments received from the public, the CBDT has now notified the rules for computation of FTC.

The key highlights of the notified rules are as below:

¹ First Report of the Tax Administration Reform Commission dated 30th May, 2014

Coverage

A resident taxpayer shall be allowed a credit for the foreign taxes paid in a country/specified territory outside India in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.

Foreign tax has been defined to mean tax covered under applicable DTAA in terms of section 90/90A of the Act. In cases of unilateral relief under section 91, it is defined to mean the tax (in the nature of income-tax) payable under the law in force in that country.

Creditable Amount

The credit for foreign tax will be made 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.

Credit of foreign tax

FTC shall be allowed in the year in which the income (corresponding to the foreign tax paid) is offered/assessed to tax in India. However, if the income (corresponding to the foreign tax paid) has been offered to tax in India in more than one year, FTC shall be allowed proportionate to the income offered in each of the years.

The rules prescribe credit for foreign tax to be the aggregate of the amounts of credit computed separately for each source of income arising from a particular overseas country. The FTC will be limited to lower of the tax payable under the Act and foreign tax paid, on such income. Further, the credit amount will be converted into Indian rupees by using the Telegraphic Transfer Buying rate as on the last day of the month immediately preceding the month in which such tax has paid/ deducted.

The Rules provide that FTC in respect of disputed foreign tax shall be allowed for the year in which such income is offered or assessed to tax in India if the taxpayer submits the following details within a period of six months from the end of the month in which the dispute is finally settled:

(a) Evidence of settlement of dispute

- (b) Evidence of discharge of foreign tax liability
- (c) Undertaking that no refund has been/ shall be claimed directly or indirectly

Availability of FTC against Minimum Alternate Tax (MAT)

As provided in the draft rules, the notified rules also provide for credit of foreign tax against MAT/Alternate Minimum tax (AMT) payable by the taxpayer in an alike manner as FTC against tax payable under normal provisions of the Act. However, the excess of FTC over the tax payable under the normal provisions is required to be ignored while computing the amount of credit under MAT/AMT.

Furnishing of documentary evidence

The draft rules had proposed that credit of foreign tax will be allowed only upon furnishing of a certificate from tax department of the overseas country, specifying the nature of income and the quantum of taxes deducted/paid by the taxpayer.

The notified rules provide that a certificate from tax department of the overseas country is not mandatory and a self-declaration by the taxpayer along with few supporting documents should be sufficient. Following are the documents to be furnished for claiming FTC:

- (a) Statement providing details of the foreign income and foreign tax paid or deducted in prescribed form (Form No. 67)
- (b) Certificate or statement specifying the nature of income and the amount of tax deducted or paid thereon:
 - From the tax authority of the concerned foreign jurisdiction, or
 - From the person responsible for withholding tax, or
 - Self-declaration from taxpayer, along with acknowledgement of online payment or bank counter foil or challan where foreign tax has been paid by the taxpayer or proof of deduction where tax been deducted

The prescribed form and supporting documents need to be furnished on or before the due date of filing of return of income in India.

Carry back of losses

The Rules provide that the prescribed Form no 67 should also be furnished in a case where carry back of loss of the current year in a foreign country results in refund of foreign tax for which credit has been claimed in any earlier years.

Dhruva comments

The release of these long awaited rules will go a long way in bringing about certainty and clarity on this key element of cross border taxation in India. The rules also lay down important clarifications regarding the nature and conditions for availing FTC and thus help in settling interpretational issues regarding FTC claims. Allowing a taxpayer to claim FTC against cess and surcharge as well as MAT/AMT liability is also welcome.

Some key uncertainties arising from draft rules (e.g. claiming of FTC on disputed taxes, requirement of obtaining certificate from foreign tax authorities, etc.) have been suitably addressed.

However, there are still a few issues that require further clarity: These include:

- Provisions for the manner of claiming underlying foreign tax credits or tax sparing credits.
- Clarity on availability of tax credit for state taxes paid in jurisdictions such as US or request
- Mechanisms for carry forward or carry back excess FTC

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