

Overview of the Draft Foreign Credit Rules released by CBDT - India Update

BACKGROUND

Foreign Tax Credit (FTC) in Double Taxation Avoidance Agreements (DTAAs)

IT Act provides for foreign tax credit (FTC) under Sections 90, 90A and 91

Sections	Provisions
Section 90	Provides relief from double taxation of income in India if there is a DTAA between India and the other country
Section 91	Provides unilateral relief from double taxation of income arising from a country with which India has not concluded a DTAA
Section 90A	Provides double tax relief for specified associations

Foreign Tax Credit (FTC) in Double Taxation Avoidance Agreements (DTAAs)

- DTAAs provide methods to remove/reduce juridical double taxation by allocating taxing rights between residence and source countries on various categories of income, by eliminating or limiting source country taxation or by requiring a residence country to grant relief for source country taxation through a credit or exemption mechanism.
- Typically, Article 23 deals with Foreign Tax Credit
- Indian DTAAs have generally adopted the credit method for providing relief from double taxation.
- *Currently, there is no specific provision under the Income Tax Act which deals with the mechanism for availing Foreign Tax Credit*

Power enabling CBDT to notify rules for giving Foreign Tax Credit

Provision of Section 295 - Amended by Finance Act 2015

Section 295(2)(ha) of the IT Act, provides that CBDT may prescribe rules specifying the procedure for the granting of relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, against the income-tax payable under the Act

Purpose of Amendment in Section 295

The Income-tax Act did not provide the manner for granting credit of taxes paid in any country outside India.

CBDT Committee to Suggest methodology for Grant of Foreign Tax Credit

A Committee was set up by CBDT to suggest the methodology for grant of Foreign Tax Credit (FTC) after examining the various issues related to it. After due consideration of the issues raised by various stakeholders, the Committee submitted its report.

Taking into account, the report of the committee and the provisions of the IT Act, CBDT released the Draft FTC rules on 18 April 2016

OVERVIEW OF DRAFT FOREIGN CREDIT RULES

DRAFT FTC RULES PROVISIONS

Basic Credit Provision

- Assessee being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India
- BY WAY OF DEDUCTION OR OTHERWISE
- YEAR OF CREDIT
 - In the year in which income corresponding to such tax has been offered to tax / assessed to tax in India

DRAFT FTC RULES PROVISIONS

Meaning of Foreign Tax Credit

- Country with which India has DTAA (Covered under section 90/90A of the IT Act)
 - Taxes covered under the said DTAA

- No DTAA with India (Section 91 of IT Act)
 - Tax payable under the law in force in that country (*as referred to in clause (iv) of Explanation to section 91*)

DRAFT FTC RULES PROVISIONS

Foreign Tax Credit available against:

- The amount of tax, surcharge and cess payable under the Act
- but not against any sum payable by way of :
 - interest,
 - fee or
 - Penalty

Note: No credit of foreign tax which is disputed in any manner shall be available

DRAFT FTC RULES PROVISIONS

Manner of Availment of Foreign Tax Credit

- Credit of foreign tax shall be the aggregate of amounts of credit computed separately for each source of income arising from a particular country or specified territory
- Amount of Credit, lower of the two:
 - tax payable under the Act on such income or
 - the foreign tax paid on such income
- Conversion Rate to be applied
 - Credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate
 - on the date on which such tax has been paid or deducted

DRAFT FTC RULES PROVISIONS

Foreign Tax Credit available also against MAT / AMT**

- FTC available against MAT / AMT
- No impact on MAT/AMT credit
 - Where the amount of foreign tax credit available against the tax payable under the provisions of section 115JB or 115JC exceeds the amount of tax credit available against the normal provisions, then while computing the amount of credit under section 115JAA or section 115JD in respect of the taxes paid under section 115JB or section 115JC, as the case may be, such excess shall be ignored

MAT = Minimum Alternate Tax; AMT = Alternate Minimum Tax

DRAFT FTC RULES PROVISIONS

Documentation Requirement

- No FTC unless specified documentation furnished by assessee
 - Certificate from the tax authority of a country or specified territory outside India specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee. However, in a case where the foreign tax is deducted at source, the assessee may furnish a certificate of tax deducted from the person responsible for deduction of such tax
 - Acknowledgement of online tax payment or bank counter foil or slip or challan for tax payment where the payment of foreign tax has been made by the assessee
 - A declaration that amount of foreign tax in respect of which credit is being claimed is not under any dispute

Scope & Limitations

This presentation is general in nature. In this presentation, we have endeavored to provide an overview of the draft Foreign Tax Credit rules released by the CBDT on 18 April 2016 for comments (comments to be given before 2 May 2016). It may be noted that nothing contained in this presentation should be regarded as our opinion of the draft Foreign Tax Credit rules. 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 presentation.

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