

Overview of Final Foreign Tax Credit Rules released by CBDT

(Notification No. 54 of 2016 dated 27 June 2016)

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.

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.

Draft Rules for grant of Foreign Tax Credit

The Draft Rules for grant of Foreign Tax Credit were issued on **18. 04.2016** for comments from stakeholders and general public.

The comments and suggestions on the Draft Rules sought by **02.05.2016**



Overview of Final Foreign Tax Credit Rules- New Income Tax Rule 128 & New Form 67 notified

FTC RULES PROVISIONS- New Income Tax Rule 128

Effective date: 1 April 2017

Basic Credit Provision [Rule 128(1)]

- 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
 - Where income has been offered to tax in more than one year, foreign tax credit shall be allowed across those years proportionately

FTC RULES PROVISIONS

Meaning of Foreign Tax Credit [Rule 128(2)]

- 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*)

FTC RULES PROVISIONS

Foreign Tax Credit available against [Rule 128(3)]:

- The amount of tax, surcharge* and cess payable under the Act
- But not against any sum payable by way of :
 - Interest
 - Fee or
 - Penalty

* Also affirmed in *Infosys Technologies Ltd. v. Jt. CIT* [\[2007\] 108 TTJ 282](#)

Disputed Foreign Tax Credit [Rule 128 (4)]

- No credit of foreign tax (part or full) which is disputed in any manner shall be available.
- However, credit for disputed tax shall be allowed in year in which such income is offered / assessed to tax in India, provided:
 - Evidence towards settlement of dispute and payment of foreign tax to be furnished within 6 months from end of the month in which dispute is finally settled
 - Undertaking that no refund of foreign tax paid, has directly or indirectly, been claimed or shall be claimed

FTC RULES PROVISIONS

Manner of Availment of Foreign Tax Credit [Rule 128 (5)]

- 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

Excess of foreign tax paid over and above tax payable in accordance with DTAA shall be ignored

- 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 last date of the month immediately preceding the month in which such tax has been paid/ deducted

FTC RULES PROVISIONS

Foreign Tax Credit available also against MAT / AMT* [Rule 128 (6)& (7)]

- 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

**Affirmed in *ACIT v. L&T Ltd.* [IT Appeal No. 4499 (Mum.) of 2008]

FTC RULES PROVISIONS

Documentation Requirement [Rule 128 (8)]

- FTC allowed on furnishing following documentation :
 - Statement of income from the country outside India offered for tax for the previous year and of foreign tax deducted/paid in new Form 67
 - Certificate/statement specifying the nature of income and tax deducted/paid from any of the following:
 - Tax authority of a country or specified territory outside India
 - Person responsible for deduction of such tax
 - Self declaration by assessee*

*Self declaration signed by the assessee shall be valid only if it is accompanied by an 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 and proof of deduction where tax has been deducted.

FTC RULES PROVISIONS

Furnishing of Form 67 [Rule 128 (9) & (10)]

- These documents required to be provided by due date of filing of return of income under section 139(1).
- Form 67 would also be required in a case where the carry backward of loss of the current year results in refund of foreign tax for which credit has been claimed in any earlier years.
- Form 67 is divided into Part A and Part B. Part A requires details such as name, PAN, address , source of income, taxes paid abroad, foreign tax credit claimed country-wise and source of income wise. Part B requires details of refund of foreign tax credit arising out of carry backward of losses and details of disputed foreign tax credit

Scope & Limitations

This presentation is general in nature. In this presentation, we have endeavored to provide an overview of the Foreign Tax Credit rules released by the CBDT vide Notification No. 54 /2016 dated 27 June 2016. It may be noted that nothing contained in this presentation should be regarded as our opinion of the final 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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