



Global Business Tax Alert
Sharp Insights

CBDT issues circular streamlining process of issue of No Objection Certificate ('NOC'), Port Clearance Certificate ('PCC'), filing of voyage return, and voyage assessment in the case of Foreign Shipping Companies (FSCs)

[CBDT Circular No. 30/ 2016 dated August 26, 2016]

Issue no: GBTA/44/2016

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Background

- The income of Foreign Shipping Companies ('FSCs') which carry passengers, livestock, mail or goods shipped at a port in India is assessable to income tax under the provisions of section 172 of the Income-tax Act, 1961 ('the Act'). Section 172 of the Act is self-contained code for assessment of FSCs in India and under the said section, the income of FSCs is deemed to be 7.5% of the amount paid or payable on account of carriage to the owner or the charterer or to any person on his behalf. The FSCs also have the option of getting assessed under other provisions of the Act to be exercised before the expiry of relevant assessment year.
- Procedurally, the master of a foreign ship is required to prepare and furnish a return of voyage to the Jurisdictional Assessing Officer ('AO') or is required to be make sufficient and necessary arrangement for filing of return with the AO within 30 days of departure of the ship from Indian port. Further, FSCs are required to obtain voyage No Objection Certificate ('NOC') from the Port Assessing Officer ('Port AO') and Port Clearance Certificate ('PCC') from the customs authorities before the departure of ship from any of the Indian port.
- The Central Board of Direct Taxes ('the CBDT' or 'the Board') had earlier issued Circular No. 732 dated 20.12.1995 to do away with the procedure of obtaining NOC for each voyage in cases which are covered by full Double Taxation Avoidance Agreement ('DTAA') relief. In such cases the AO is competent to issue the annual NOC after verifying applicability of DTAA.
- However, the Board has received representations in respect of following procedural difficulties still faced by the FSCs in issuance of PCCs:
 - FSCs availing DTAA benefits are still required to approach Port AO (at all ports of call) for issuance of NOC for every vessel at the port for onward submission to customs department at the port;
 - No uniform practice is being followed by the Port AOs in giving NOC to each voyage and also in making the assessment of voyage return. At some ports, the annual NOC is honored by the Port AO, however, at other ports the annual NOC is not honored and the Port AO are still insisting on filing of documentation such as Tax Residency Certificate, proof of effective management, etc. This leads to duplication of work and creates logistical difficulties as the Port AOs are normally situated at a considerable distance from the jurisdictional AOs.

Clarifications in the circular no. 30/2016

- The procedure given in Circular No. 732 dated 20.12.1995 should continue to be followed by the FSCs and AOs. The AOs should continue to take the declaration from the applicant that the treaty benefits would be available only in respect of freight in international traffic.

Issue of Voyage NOC

Issue of voyage NOC shall be dealt in following 3 different ways:

- **Case 1: Where entire cargo belongs to single FSC belonging to a country with full DTAA relief**

The annual NOC issued by the AO will also serve the purpose of voyage NOC, based on which PCC shall be issued by Customs Authorities.

- **Case 2: Where cargo belongs to number of FSCs, each belonging to a country with full DTAA relief and to each of which annual NOC has been issued**

Each voyage NOC is not required. However, master of ship shall file a CA certificate in prescribed form accompanied with annual NOC for all the FSCs to which the cargo ship belongs to facilitate verification by Customs authorities.

- **Case 3: Cases not falling in above 2 categories**

The Master of the ship would be required to obtain a voyage NOC from the Officer having jurisdiction over the port. The Customs Authorities shall issue the PCC only upon production of such NOC or an authenticated copy.

Filing of Voyage Return

For a voyage where cargo belongs to a number of FSCs, even if all of them belong to treaty countries with full DTAA relief, there shall be different AOs for each such FSC. In all such cases, the voyage return shall continue to be filed with the AO having jurisdiction over the port.

Voyage Assessment

- **Where FSC eligible for full treaty relief prefers to be assessed on a voyage-wise basis/ on a ship basis**

The Port AO before whom a voyage return has been filed shall give due credit to the annual NOC issued by the AO and assessment in such cases must be expeditiously done without conducting any further verification with respect to eligibility of the FSC to treaty benefits. The annual NOC issued by the AO must be honored during such assessment.

- **Where FSC files an intimation under section 172(7) to get assessed on annual basis under other provisions**

The voyage assessment before the Port AO should cease and the Port AO shall intimate the details of voyage and freight in respect of that FSC to the AO issuing the annual NOC.

Conclusion

The Circular is expected to provide relief to the FSCs from the day to day hassles faced by the FSCs in obtaining PCCs from the Customs Authorities and shows the commitment of the CBDT towards creating the tax friendly environment in the Country.

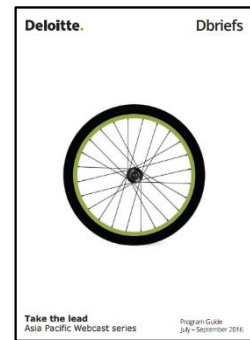
Upcoming Dbriefs – Register

Tax impact of Indian Accounting Standards (IndAS)

1 September, 2:00 – 3:00 PM HKT (GMT +8)

Many Indian companies are required to adopt the new Indian Accounting Standards (IndAS) in a phased manner. IndAS brings in the concept of fair valuation and much more rigour in accounting for a transaction in accordance with its substance, rather than form. This raises the potential for notional income or expenses to be recognised for accounting purposes. But how will IndAS impact the calculation of taxable income for Indian tax purposes?

Register



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