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CBDT notifies draft rules for granting foreign tax credit under section 90 / 90A / 91 of the Income-tax Act, 1961

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In this issue:

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The Central Board of Direct Taxes ('CBDT') has notified draft rules for granting relief or deduction of Income-tax under section 90 / 90A / 91 of the Income-tax Act, 1961 ("the Act") [i.e. foreign tax credit for relief from double taxation]. The rules would be notified under section 295(2)(ha) of the Act.

Background

- A Committee was set up by the 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 had submitted its report.
- Taking into account, the report of the Committee and the provisions of the Act, the CBDT has proposed to issue the following rules for grant of FTC.

Draft Rules

- A resident assessee shall be allowed credit for the amount 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 the manner and to the extent as specified in this rule.
- The foreign tax shall mean –
 - in respect of a country or specified territory with which India has entered into a Double Taxation Avoidance Agreement ('DTAA') in terms of section 90 or 90A of the Act, the tax covered under the said agreement;
 - in respect of any other country or specified territory, the tax payable under the law in force in that country in the nature of income-tax referred to in clause (iv) of the Explanation to section 91 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.
- Further, no credit shall be available in respect of any amount of foreign tax which is disputed in any manner by the assessee.
- FTC shall be computed and given effect in the following manner:
 - The credit shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income;
 - The credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate ('TTBR') on the date on which such tax has been paid or deducted.

- In a case where tax is payable under the Minimum Alternate Tax ('MAT') provisions under section 115JB of the Act or Alternate Minimum Tax ('AMT') provisions under section 115JC of the Act, FTC shall be allowable in the same manner as is allowable against any tax payable under the normal provisions of the Act.
- Further, where the amount of FTC available against tax payable under MAT / AMT provisions exceeds the amount of tax credit available under the normal provisions, then while computing MAT / AMT credit, such excess should be ignored.
- The following documents should be furnished by the assessee to claim FTC:
 - 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. 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; and
 - Declaration that amount of foreign tax in respect of which credit is being claimed is not under any dispute.

In this regard, the CBDT has invited comments and suggestions of stakeholders and general public on the draft Rules by May 2, 2016.

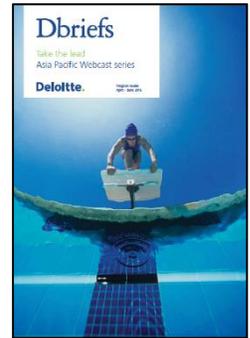
Comments

Through the draft rules, the CBDT has attempted to bring consistency in claim of FTC and ensure that there is streamlining of the process with requisite documentation. However, certain areas have not been covered in the draft rules such as practical issues involved in obtaining certificate from the tax authority of a foreign country / specified territory, no clarity on mechanism to be followed when the certificate / challan is not in English language, availability of MAT credit when MAT has been discharged through FTC, availability of FTC where the DTAA does not warrant actual payment of tax for claiming FTC (i.e., tax sparing credit), etc. It remains to be seen whether such aspects would be incorporated in the final rules, post receipt of inputs from the public.

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