CBDT streamlines the process of Port Clearance Certificate, voyage return, voyage assessment and issuance of NOC in the case of Foreign Shipping Companies

Under the Income-tax Act, 1961 (the Act) there are special provisions¹ which deal with taxability of non-residents engaged in the shipping business (Foreign shipping company or FSC). Section 172 provides that the income of FSC carrying passengers, livestock, mail or goods and leaving from an Indian port is computed at 7.5 per cent of the amount paid/payable on account of such carriage. The master of a foreign ship has to prepare and furnish a voyage return to the Assessing Officer (AO) before the ship departs from the port. The AO may allow the return to be filed within 30 days of departure of the ship, if he/she is so satisfied that return cannot be filed before the departure of a ship. Pursuant to filing of the return, the AO shall assess the voyage/carriage income and tax payable thereon.

The port clearance is given on either payment of tax due or after making satisfactory arrangements for the same. In case, the owner/charterer of the ship claims that an annual assessment of its total income be made under other provisions of the Act, the tax paid before each voyage would be treated as advance tax.

The circular issued by the Central Board of Direct Taxes (CBDT) on 20 December 1995² authorised the AO to issue an annual No Objection Certificate (NOC) which would be valid for a year, after carefully verifying the applicability of the tax treaty. In this context, the following representations were made:

- Port AOs do not follow uniform practice while giving NOC for each voyage and while conducting voyage assessment.
- At some ports, the port AOs do not honour the annual NOC and still insist for documentation such as submission of tax residency certificate, proof of effective management, etc. Such cases lead to duplication of work/filing of documents.
- FSCs having treaty benefits are still required to approach Port AOs (at all ports of call) for issuance of NOC for every vessel.

On examining the above matter, recently, CBDT issued a circular³ prescribing the following guidelines for streamlining the process:

The AO, before issuance of annual NOC to FSC should examine the applicability of tax treaty to such FSC. The annual NOC should clearly mention names of ships owned/chartered by the FSC, names of shipping companies from which ships are chartered, names of the members of the pool and their ships in the pool. The AO should continue to take the declaration from the applicant that the tax treaty benefits would be available only in respect of freight in international traffic.

**Voyage NOC**

The voyage NOC can be issued in the following three different ways:

- Where the entire cargo belongs to a single FSC, belonging to a country with full tax treaty relief, the annual NOC issued by jurisdictional

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¹ Section 172 of the Act
² Circular no 30/1995, dated 20 December 1995
³ Circular no. 30/2016, dated 26 August 2016
AO will serve the purpose of voyage NOC, based on which Port Clearance Certificate (PCC) shall be issued by customs authorities. Voyage NOC from the AO having jurisdiction over the port has been done away.

- Where cargo belongs to a number of FSCs, each belonging to a country with full tax treaty relief and to each of which annual NOC has been issued, voyage NOC is not required. A master of a ship shall file a CA certificate in the prescribed form to facilitate verification by customs authorities. CA certificate shall be accompanied with an annual NOC for all FSCs to which cargo in the ship belongs.

- In any other case, master of the ship shall obtain a voyage NOC from the AO having jurisdiction over the port. Based on this, the custom authorities shall issue the PCC.

**Voyage return**

- Voyage return in respect of a voyage, where cargo belongs to a number of FSCs (belonging to countries with full tax treaty relief) shall continue to be filed with the AO having jurisdiction over the port.

**Voyage assessment/Annual assessment**

**Voyage assessment**

- Where FSC is eligible for full tax treaty relief and prefers to be assessed on voyage basis/ship basis, the Port AO before whom such a voyage return has been filed shall give due credit to the annual NOC issued by the AO.

- In such cases, the AO shall carry out an assessment expeditiously and without conducting any further verification with respect to the eligibility of the FSC as regard to tax treaty benefits. The annual NOC issued by the jurisdictional AO must be honoured.

**Annual assessment**

- In other cases i.e. where FSC chose to be assessed on an annual basis instead of on a voyage basis, 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.

**Our comments**

Specific features of the foreign shipping industry in India is that their day-to-day running of business is dependent on tax clearances viz. the PCC. Delay in obtaining the PCC increases the ship’s turn-around time and costs and, consequently impacts the smooth business operations of FSC in India as well as globally.

It was the need of the hour that appropriate changes be made in the regulations to eliminate practical challenges faced by FSC at the ground level on account of onerous clearance procedures.

The circular issued by CBDT streamlining the procedural aspects is expected to dispel practical difficulties faced by FSCs, thereby offering ease of compliance in India.

It would be apt if CBDT also issues a similar clarification to streamline such compliance procedure for FSCs opt to be governed by the provisions of Section 44B of the Act.

Currently, no uniform format of NOC has been prescribed for issuance by the AO. It could be effective if CBDT issues a standard NOC format for the AO to issue such NOC which is uniformly followed for the industry as a whole.
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