CBDT issues draft rules on Foreign Tax Credit

As per Section 295(2)(ha) of the Income-tax Act, 1961 (the Act) the Central Board of Direct Taxes (CBDT) may prescribe rules specifying the procedure for the granting of relief or deduction under Section 90, 90A or 91 of the Act of any income-tax paid in any country or specified territory outside India, against the income-tax payable under the Act.

The CBDT had set up a committee to suggest the methodology for grant of Foreign Tax Credit (FTC). After due consideration of the issues raised by various stakeholders, the committee submitted its report.

On the basis of the report of the committee and the provisions of the Act, the CBDT has proposed the following draft rules1 for the grant of FTC:

- The resident taxpayer shall be allowed FTC of any 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.

- The ‘foreign tax’ means –
  - In respect of a country or specified territory with which India has entered into a tax treaty under Section 90 or 90A of the Act, the tax covered under the said tax treaty.

- In respect of a country or specified territory with which India has not entered into a tax treaty under the Act, the nature of income-tax referred to in Section 912 of the Act.

- The 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.

- FTC shall not be available in respect of any amount of foreign tax which is disputed by the taxpayer.

- The FTC shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory and given effect to in the following manner:
  - The FTC shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income.
  - The FTC 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.

- In the case where any tax is payable under the provisions of Minimum Alternate Tax (MAT) under the Act, the credit of foreign tax shall be allowed against such tax in the same manner as is allowable against any tax payable under the normal provisions of the Act.

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1 F. No. 142/24/2015-TPL, dated 18 April 2016

2 Clause (iv) of Explanation to Section 91 of the Act – The expression ‘income tax’ in relation to any country includes any excess profits tax or business profits tax charged on the profits by the government of any part of that country or a local authority in that country.
Where the amount of FTC available against the tax payable under the provisions of MAT, exceeds the amount of tax credit available against the normal provisions, then while computing the amount of MAT credit in respect of the taxes paid under MAT provisions, as the case may be, such excess shall be ignored.

The FTC shall not be allowed unless the following documents are furnished by the taxpayer:

- 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 taxpayer. However, in a case where the foreign tax is deducted at source, the taxpayer may furnish a certificate of tax deducted from the person responsible for deduction of such tax;

- Acknowledgment 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 taxpayer; and

- A declaration that amount of foreign tax in respect of which credit is being claimed is not under any dispute.

**Our comments**

Draft rules suggest the methodology for grant of FTC in certain situations. It also deals with the claim of FTC vis-à-vis provisions of MAT. It states that FTC shall not be available against the amount of interest, fee or penalty. It further states that no credit shall be available in respect of any amount of foreign tax which is disputed in any manner by the taxpayer.

Draft rules state that FTC shall not be allowed unless the taxpayer will furnish specified documents like a certificate from the tax authority of a country or specified territory outside India specifying the nature of income and the amount of taxes paid by the taxpayer. In a case where the foreign tax is deducted at source, a certificate from the deductor may be furnished. The taxpayer will be required to provide proof of taxes paid abroad for e.g. bank counter foil, etc. The taxpayer also needs to furnish a declaration that amount of foreign tax in respect of which credit is being claimed is not under any dispute.

The CBDT has invited comments and suggestions on the draft rules by 2 May 2016 by way of an email3 or by post4. Appropriate representations are to be made on certain aspects arising out of draft rules which may come in conflict with some of the tax treaties.

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4 Comments and suggestions may be submitted by 2 May 2016 by post at the following address with ‘Comments on draft rules for granting Foreign Tax Credit’ written on the envelope:
Director (Tax Policy & Legislation)-IV
Central Board of Direct Taxes,
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North Block, New Delhi – 110 001