Draft Foreign Tax Credit Rules released

April 20, 2016

In brief

The Central Board of Direct Taxes (CBDT) has released draft rules (the Rules) for granting Foreign Tax Credit (FTC) to resident taxpayers in respect of taxes paid in overseas countries. The Rules lay down broad principles and conditions for computation and claim of FTC respectively. The CBDT has invited comments and suggestions on the Rules by 2 May, 2016.

In detail

Section 295(2)(ha) of the Income-tax Act, 1961 (the Act) gives CBDT the power to prescribe rules for claim of FTC to resident taxpayers in respect of taxes paid in overseas countries. In exercise of this power, the CBDT has released draft Rules for granting FTC. These Rules are summarised below:

Year of availability

FTC shall be available to the taxpayer in the year in which the income corresponding to such foreign tax has been offered to tax or been assessed to tax in India.

Mode of payment of foreign tax

Direct payment or by way of deduction.

Meaning of foreign tax

Foreign tax shall mean:

- in respect of a country with which India has entered into a double taxation avoidance agreement (tax treaty):
  - tax covered under the said tax treaty; and
  - in respect of any other country: the tax payable under the law in force in that country in the nature of income-tax including any excess profits tax or business profits tax charged on the profits by the Government of any part of the foreign country or by a local authority in that country.

Tax against which credit is available

- FTC shall be available against the amount of tax, surcharge and cess payable under the Act.
- FTC shall also be allowed against tax payment under Minimum Alternate Tax (MAT)/Alternate Minimum Tax (AMT) provisions.
- FTC shall not be available against the following:
  - payment of any interest, fee or penalty under the Act; and
  - any amount of foreign tax disputed by the taxpayer.

Mode of computation

- FTC is to be computed separately for each source of income arising from a particular country. Total available FTC shall be the aggregate of the amounts of FTC computed separately for each source of income.
- FTC shall be the lower of:
  - tax payable under the Act on the income; or
  - foreign tax paid on the income

Rate of exchange

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.

MAT credit implications

Any excess FTC available against tax payable under the MAT/AMT provisions as compared to the tax payable under the normal provisions shall be ignored while
computing the MAT/ AMT credit to be carried forward.

**Documentation requirements**

The Rules require taxpayers to furnish certain documents, in the absence of which FTC will not be available. These documents are:

1. In cases where the foreign tax is deducted at source:
   - Certificate from the tax authority of the foreign country or the person responsible for deduction of tax specifying the nature of income and amount of tax deducted therefrom; and
   - A declaration by the taxpayer that amount of foreign tax in respect of which credit is being claimed is not under any dispute.

2. In cases where the foreign tax is paid by the taxpayer:
   - Certificate from the tax authority of the foreign country specifying the nature of income and amount of tax paid by the taxpayer;
   - Proof of tax payment; and
   - A declaration by the taxpayer that amount of foreign tax in respect of which credit is being claimed is not under any dispute.

**Comments and suggestions on draft rules**

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

**The takeaways**

- Much needed clarity has been provided on the eligibility for, and claim of FTC against surcharge and cess and also against MAT liability.
- The Rules are in line with the tax treaty provisions.
- However, the Rules fail to address the following issues:
  - Underlying tax credit on dividend income;
  - Carry forward of excess foreign tax paid; and
  - Branch profit taxes paid by branches of Indian companies abroad.

- Obtaining certificate from tax authority of a foreign country could lead to practical difficulties.

**Let’s talk**

For a deeper discussion of how this issue might affect your business, please contact:

**Tax & Regulatory Services – Direct Tax**

Gautam Mehra, *Mumbai*
+91-22 6689 1154
[mailto:gautam.mehra@in.pwc.com?subject=Tax%20Insights]([mailto:gautam.mehra@in.pwc.com?subject=Tax%20Insights](mailto:gautam.mehra@in.pwc.com?subject=Tax%20Insights))

Rahul Garg, *Gurgaon*
+91-124 330 6515
[mailto:rahul.garg@in.pwc.com?subject=Tax%20Insights]([mailto:rahul.garg@in.pwc.com?subject=Tax%20Insights](mailto:rahul.garg@in.pwc.com?subject=Tax%20Insights))
Tax Insights

For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

© 2016 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, “PwC” refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.