

Foreign Tax Credit Rules Alert

Introduction

The Central Board of Direct Taxes has released a notification on June 27, 2016, introducing a new Rule (Rule 128. Foreign Tax Credit) that essentially sets down the conditions, process and documentation for claim of foreign tax credit (FTC) by a person resident in India.

Key highlights

The key highlights of the notified Rule are as under:

- The Rule will apply from April 1, 2017, ie it will apply to FTC claims for tax year 2016-17 onwards.
 - FTC will only be available against the India tax payable that would include surcharge and cess but not any interest, fee or penalty and shall not, in any case, exceed the amount of taxes payable in India.
 - Foreign taxes will be considered as per the provisions of the respective tax treaty and, where no tax treaty exists, as taxes payable under the domestic tax laws of the foreign country.
 - FTC will be available and claimed separately against each source of income by comparing the taxes paid in the foreign country against each such source.
 - The foreign taxes will need to be converted to INR using the State Bank of India Telegraphic Transfer Rate as on the last day of the month immediately preceding the month in which the foreign taxes are paid or withheld, as the case may be.
- FTC will not be available where the foreign taxes are under dispute. However, once the dispute is settled, the foreign taxes can be claimed as FTC for the year to which the income relates and is offered to tax.
 - In order to claim the FTC, the taxpayer will have to furnish the following documents:
 - Form 67, a new form, notified alongwith the Rule 128. This form is essentially a statement of source-wise foreign income and taxes paid with dispute status in the foreign country; and
 - A certificate or statement, specifying the nature of income and the amount of tax withheld or paid thereon, from any of the following:
 - The foreign country tax authority;
 - The employer or other person responsible for withholding taxes; or
 - The taxpayer, provided it is accompanied by the proof of taxes paid in the foreign country, whether by tax withholding or otherwise.

The aforesaid documents will have to be submitted on or before the due date of submitting the India tax return.

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Conclusion

The notification resonates the existing provisions of the law and additionally lays down the process and documentation requirements for claim of FTC.

Till date, to claim tax treaty benefits, there was a requirement only for non-resident taxpayers to obtain a Tax Residency Certificate and in certain cases, fill Form 10F. Now, even resident taxpayers have to furnish prescribed forms and certificates.

In the past few years, the tax department has been moving towards increased documentation for reporting and claiming foreign country benefits in India. We can only hope that this move is aimed at decreasing overall litigation and not just act as a pain point for taxpayers.

One of the good points of this Rule appears to be that residents can now claim FTC based on their pay-slips itself and do not need to wait for filing their tax returns. However, where a refund becomes available in the foreign country returns due to personal allowances and deductions, the FTC claim will need to be corrected by revising the India tax return.

The process of submitting the Form 67 and statement has still not been notified. We will also have to see how the tax department will deal with dispute cases although this would be a very rare occurrence for salaried taxpayers.

Clients are advised to make note of the notification, as it increases the compliance requirements of their cross-border population.

About us

Broadening Horizons is a specialty services company providing expatriate tax, social security, immigration and exchange control advisory and compliance services.

It has specially designed service packages for employers with cross-border employee population as well as individuals.

Broadening Horizons partners with international expatriate tax firms for delivering mobility services and therefore, can provide cross-border services and solutions.

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