Foreign Tax credit

There are many Indian residents migrated abroad to countries like USA, UK, etc., for education purpose, for business or for employment purpose. Also, some companies may have global business operations and the global income may be taxed in two countries i.e. in source country as well as residence country. This envisaged the need for Foreign Tax credit rules. A person can avail the benefit of foreign tax credit i.e. availing tax benefit for the tax to be paid in other country for the taxes already paid in one country.

Availing Foreign Tax Credit ('FTC') in case of assessee's with cross border transactions was contentious issue. In order to provide clarity, CBDT has notified Rule 128 of the Income Tax Act, 1961 vide Notification No. 54/2016 dated 27th June, 2016 which is effective from 1st April, 2017. This will help in reducing litigation and shall avoid double taxation and encourage international transactions.

ELIGIBILITY CRITERIA

A resident assessee will be eligible to claim FTC if any tax has been paid by him in a country or specified territory outside India. Grant of FTC shall be allowed only in the year in which the income corresponding to such tax has been offered to tax in India. If income is offered to tax in more than one year, credit of foreign tax shall be allowed in the same proportion in which the income has been offered to tax in India.

MEANING OF FOREIGN TAXES

Eligible foreign tax shall be the taxes covered under Double Taxation Avoidance Agreement ('DTAA') entered between India and the foreign country. In cases, where there does not exist any DTAA between India and the foreign country, eligible foreign tax shall mean the tax payable under the law in force in that country.

AVAILABILITY OF FTC

Assessee can avail FTC against the amount of tax, surcharge and cess payable by such assessee in India under the Act. However, it has been clarified that FTC will not be allowed in respect of any sum payable by way of interest, fee or penalty.

Also credit shall not be available in respect of any amount of foreign tax which is disputed in any manner by the assessee. However, the credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India if assessee within 6 months from the end of the month in which the dispute is finally settled, furnishes relevant evidence, statements and undertaking that no refund for such amount has been or shall be claimed.

METHODOLOGY FOR CALCULATION OF FTC

Credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country. The credit allowable shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income. In case foreign tax paid exceeds the tax payable under relevant DTAA, then the excess tax shall be ignored.

Further, the credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.

FTC AVAILABILITY WHEN MINIMUM ALTERNATE TAX (MAT) /ALTERNATE MINIMUM TAX (AMT) IS PAYABLE

Credit of foreign tax shall be allowed against MAT/AMT in the same manner as is available against tax payable under the normal provisions of the Act.

However, where the amount of FTC available against the tax payable under the provisions of MAT/AMT exceeds the amount of tax credit available against the normal provisions, then while computing the amount of credit in respect of the taxes paid under MAT/AMT, as the case may be, such excess shall be ignored. The provisions aim to curb claiming dual advantage by assessees.

DOCUMENTS FOR AVAILING OF FOREIGN TAX CREDIT

For claiming FTC, assessee shall be required to furnish following documents: -

a) Statement of income from a country or specified territory outside India and Foreign Tax deducted or paid on such Income in Form No. 67.

b) Certificate or statement specifying the nature of income and amount of tax deducted therefrom or paid by the assessee –

   i) From the tax authority of the country or specified foreign territory or,

   ii) From the person responsible for deduction of such tax or,

   iii) Signed by the assessee along with with acknowledgement of online tax payment or bank counter foil or challan for tax payment where the payment of has been made by the assessee and proof of deduction where the tax has been deducted.

Form No. 67 and the certificate and statement referred above shall have to be furnished online on or before the due date of filing of return of income. Form 67 shall also be furnished where carry backward of loss of the current year results in refund of FTC claimed in earlier years.

CONCLUSION

The rules for FTC has provided relief to global Indian businesses earning significant income from foreign source. Various issues requiring clarification or creating unnecessary adversities on assessee have been well addressed in the rules. However, there are long standing pain points which are still unaddressed in the foreign tax credit area. Also litigation on various other aspects cannot be completely ruled out.