

# EY Tax Alert

**CBDT extends the time allowed to file prescribed documents to claim foreign tax credit**

## Executive summary

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

The Central Board of Direct Taxes (CBDT)<sup>1</sup>, recently issued a Notification amending Rule 128 of the Income-tax Rules, 1962, for claiming foreign tax credit (FTC) in India. The Indian Tax Laws (ITL) require a resident taxpayer desirous of claiming FTC to submit the prescribed documents to the tax authority. Hitherto, Rule 128 required such documents to be furnished on or before the due date for filing of the return of income (ROI) in India. This created practical challenges and genuine hardship for many taxpayers, more particularly, where the foreign taxes were paid after the expiry of the due date for filing ROI in India. The amended Rule 128 now extends the time allowed to file the prescribed documents beyond the due date for ROI filing, till the expiry of one year from the end of the relevant tax year<sup>2</sup> (TY) in which the income pertaining to such FTC has been offered or assessed to tax. But this is subject to the condition that the ROI for such TY has been furnished within the time specified for filing the original or belated ROI.

Additionally, consequent to the amendment to the ITL vide Finance Act (FA) 2022 which introduced the facility to the taxpayers to file an updated ROI offering additional income to tax within three years of the end of the TY, the amended Rule 128 also permits filing of updated documents with regard to claim of FTC in respect of such additional income disclosed in the updated ROI.

<sup>1</sup> The apex body for administration of direct taxes in India

<sup>2</sup> The year beginning on 1 April of one calendar year and ending on 31 March of the immediately succeeding calendar year.

While the Notification states that the amendment shall be deemed to have come into force from 1 April 2022, the Explanatory Memorandum to the Notification clarifies that the amended Rule 128 is effective from 1 April 2022 so that it applies to all the claims of FTC furnished during financial year (FY) 2022-23. It is also certified that no person is being adversely affected by giving retrospective effect to the amended Rule.

## Background

- ▶ The ITL provide for relief from juridical double taxation of income of Indian resident taxpayers through a Double Taxation Avoidance Agreement (DTAA) or, in the absence of a DTAA, through unilateral relief as specified in the ITL. Such relief is in the form of FTC.
- ▶ In this respect, the CBDT notified Rule 128<sup>3</sup> w.e.f. 1 April 2017 pertaining to the manner of computation of FTC as well as the procedural requirements in order to make such a claim.
- ▶ As per the Rule 128, such FTC is allowed in the year in which the income (corresponding to the foreign tax paid) is offered or assessed to tax in India.
- ▶ Further, every taxpayer desirous of claiming FTC is mandatorily required to furnish the following documents on or before the due date for filing of the ROI (i.e., "original ROI"):
  - ▶ Statement providing details of the foreign income, offered for tax for the TY, and foreign tax paid or deducted thereon in prescribed form (viz. Form 67); and
  - ▶ Certificate or statement specifying the nature of income and the amount of tax deducted or paid thereon.
- ▶ Here, it may be noted that, the ITL also allow a taxpayer to:
  - ▶ File a "**belated ROI**" beyond the statutory due date, but up to nine months from the end of the relevant TY.
  - ▶ As amended vide FA 2022, file an "**updated ROI**" within three years from the end of the TY to rectify errors or omissions in cases where additional income is to be offered. Such filing is, however, subject to payment of additional taxes to the tune of 25%-50% on additional income and interest thereon<sup>4</sup>.

- ▶ However, the erstwhile Rule 128 expressly provided that the prescribed documents are required to be filed on or before the due date of filing original ROI. Hence, by implication, the tax authority did not consider the documents furnished after the due date for furnishing the original ROI.
- ▶ This resulted in genuine hardship where a taxpayer, who had actually paid taxes overseas and was legitimately entitled to claim FTC, was disentitled merely on account of administrative rules and procedures due to the delayed filing of the documents.
- ▶ Moreover, in many cases of taxpayers having foreign income taxed abroad, there was no clarity on the amount of tax paid/payable overseas within the time permitted for filing original return. By the time such clarity was available, the original ROI filing date would have passed, leading to loss of FTC. The situation was especially compounded in respect of countries following a calendar year for tax purposes where the income for the period from January to March would be assessed to tax in the foreign country after the due date for filing original ROI in India has already expired. Further, many countries do not have the mechanism to pre-pay taxes or pay advance tax, so as to enable meeting the timelines of claiming FTC in India.
- ▶ Hence, stakeholders made representations to the CBDT requesting it to alleviate such hardship so as to avoid possible double taxation and/or cash-flow issues faced by taxpayers.

## Amendment of Rule 128

In response to the various representations referred above, the CBDT has now issued a Notification<sup>5</sup> amending Rule 128 as follows:

- ▶ The documents shall be furnished at any time before the expiry of one year from the end of the relevant TY. However, this is subject to the condition that the ROI for such TY is furnished within the statutory due date for filing original ROI or for filing a belated return within nine months from the end of the relevant TY.
- ▶ Further, taxpayers are now also permitted to furnish updated/revised documents w.r.t FTC claimed in respect of additional income offered to tax in the updated ROI. Such updated documents are to be filed on or before the furnishing of the updated ROI.

<sup>3</sup> CBDT Notification no. 54/2016 dated 27 June 2016; Refer EY Tax Alert titled "Indian tax administration notifies rules for granting foreign tax credit" dated 30 June 2016

<sup>4</sup> Refer our tax alert titled "EY Budget Connect 2022 - Consolidated tax and policy alerts" dated 1 February 2022

<sup>5</sup> Notification No. 100 of 2022; dated 18 August 2022

On an illustrative basis, following timelines can be noted for filing the documents to claim FTC in relation to income assessable to tax in TY 2022-23:

Nature of ROI	Due date for filing ROI	Erstwhile timeline for filing the documents to claim FTC	Extended timeline for filing the documents
Original ROI	As specified for different taxpayers <ul style="list-style-type: none"> <li>- 31 October 2023 (for companies and taxpayers<sup>6</sup> with tax audit)</li> <li>- 30 November 2023 (taxpayers<sup>7</sup> subject to transfer pricing)</li> <li>- 31 July 2023 (for all other taxpayers)</li> </ul>	On or before due date for furnishing the original ROI	Upto 31 March 2024, provided the original ROI is filed on or before its due date
Belated ROI	Before 31 December 2023 or before completion of assessment, whichever is earlier	On or before furnishing of original ROI. By implication, tax authority did not permit FTC where belated ROI was filed.	Upto 31 March 2024, provided the belated ROI is filed on or before its due date
Updated ROI	Before 31 March 2026	On or before furnishing of original ROI. There was ambiguity whether FTC could be claimed for first time or revised in updated ROI.	On or before the filing of updated ROI

While the Notification states that the amendment shall be deemed to have come into force from 1 April 2022, the Explanatory Memorandum to the Notification clarifies that the amended Rule 128 is effective from 1 April 2022 so that it applies to all the claims of FTC furnished during FY 2022-23. It is also certified that no person is being adversely affected by giving retrospective effect to the amended Rule.

<sup>6</sup> Including partners of firm/LLP liable to tax audit

<sup>7</sup> Including partners of firm/LLP liable to tax audit

## Comments

The extension of timeline to furnish the documents to claim FTC will benefit many taxpayers, enabling them to claim FTC which they are legitimately entitled to but were prevented from claiming due to time limitation.

Due to the extension of timeline for furnishing documents to claim FTC, there is a possibility of mismatch between FTC claimed in original/belated ROI and FTC as per documents furnished subsequently. But FTC claim may be restricted to FTC claimed in original/belated ROI if lower than FTC as per documents furnished subsequently. Taxpayer may furnish a revised ROI to address such mismatch, but one will need to wait and watch whether revised FTC will be allowed by the tax authority while processing the revised ROI. Also, while amended Rule 128 is silent on the revision of FTC claim by filing revised documents, the income tax portal presently permits such revision.

Separately, the Notification states that the amendment to Rule 128 shall be deemed to have come into force from 1 April 2022. The Explanatory Memorandum states that the amendment is effective from 1 April 2022 so that it applies to all the claims of FTC furnished during the FY 2022-23. It also certifies that no person is being adversely affected by giving a retrospective effect to this rule. Hence, it appears that the amended Rule 128 may also apply to TY 2021-22 for which first due date for filing original ROI for the specified category of taxpayers has already expired on 31 July 2022. Taxpayers who missed out on claiming FTC or filing documents in support of FTC claimed in original ROI filed on or before 31 July 2022 can now file such documents on or before 31 March 2023. Other taxpayers who are yet to file ROI for TY 2021-22 can also consider the extended timeline for furnishing documents to claim FTC.

However, Notification no. 9, dated 19 September 2017 issued by the CBDT, requires a resident to not only furnish the documents electronically but also to e-verify them, in order to claim FTC in India. In this backdrop, the current options available to a resident taxpayer to e-verify create practical challenges, since many taxpayers (especially expatriates working in India) may not have access to any of the prescribed mechanisms. Thus, the requirement of mandatory e-verification creates a procedural hurdle to claim FTC which is yet to be resolved.

In line with the extension of timeline, it is hoped that in the spirit of 'ease of doing business', the CBDT may also address the above practical difficulty at the earliest.

# Our offices

## Ahmedabad

22nd Floor, B Wing, Privilon  
Ambli BRT Road, Behind Iskcon  
Temple, Off SG Highway  
Ahmedabad - 380 059  
Tel: + 91 79 6608 3800

## Bengaluru

12th & 13th floor  
"UB City", Canberra Block  
No. 24, Vittal Mallya Road  
Bengaluru - 560 001  
Tel: + 91 80 6727 5000

Ground Floor, 'A' wing  
Divyasree Chambers  
# 11, O'Shaughnessy Road  
Langford Gardens  
Bengaluru - 560 025  
Tel: + 91 80 6727 5000

## Chandigarh

Elante offices, Unit No. B-613 & 614  
6th Floor, Plot No- 178-178A  
Industrial & Business Park, Phase-I  
Chandigarh - 160 002  
Tel: + 91 172 6717800

## Chennai

Tidel Park, 6th & 7th Floor  
A Block, No.4, Rajiv Gandhi Salai  
Taramani, Chennai - 600 113  
Tel: + 91 44 6654 8100

## Delhi NCR

Golf View Corporate Tower B  
Sector 42, Sector Road  
Gurugram - 122 002  
Tel: + 91 124 443 4000

3rd & 6th Floor, Worldmark-1  
IGI Airport Hospitality District  
Aerocity, New Delhi - 110 037  
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B  
Tower 2, Sector 126  
Gautam Budh Nagar, U.P.  
Noida - 201 304  
Tel: + 91 120 671 7000

## Hyderabad

THE SKYVIEW 10  
18th Floor, "SOUTH LOBBY"  
Survey No 83/1, Raidurgam  
Hyderabad - 500 032  
Tel: + 91 40 6736 2000

## Jamshedpur

1st Floor, Shantiniketan Building,  
Holding No. 1  
SB Shop Area, Bistupur  
Jamshedpur - 831 001  
Tel: + 91 657 663 1000

## Kochi

9th Floor, ABAD Nucleus  
NH-49, Maradu PO  
Kochi - 682 304  
Tel: + 91 484 433 4000

## Kolkata

22 Camac Street  
3rd Floor, Block 'C'  
Kolkata - 700 016  
Tel: + 91 33 6615 3400

## Mumbai

14th Floor, The Ruby  
29 Senapati Bapat Marg  
Dadar (W), Mumbai - 400 028  
Tel: + 91 22 6192 0000

5th Floor, Block B-2  
Nirlon Knowledge Park  
Off. Western Express Highway  
Goregaon (E)  
Mumbai - 400 063  
Tel: + 91 22 6192 0000

## Pune

C-401, 4th floor  
Panchshil Tech Park, Yerwada  
(Near Don Bosco School)  
Pune - 411 006  
Tel: + 91 20 4912 6000

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