

SATURDAY INTERNATIONAL TAX GYAN !!!

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Amendment in Filing of Form 67

114

Date: 20.08.2022

Requirement of Filing of Form 67



- Person's who are earning income from 2 different countries might be required to pay some tax in both countries and in such situation the resident country might **allow credit of tax** paid in foreign country as per it's laws.
- India also provides such facility to claim credit of tax paid in foreign country and **section 90** read with **rule 128** governs the provision to claim foreign tax credit in India.
- For claiming foreign tax credit, as per Income Tax rules, assessee was required to **file Form 67** on e-filing portal before due date of filing Income tax return u/s 139(1).

Amendment In Filing Of Form 67



- ❑ Income tax department has vide **notification no. 100 of 2022 dt.18.08.2022** amended the rules to claim foreign tax credit and filing of Form 67 and relevant extract of notification amending sub-rule 9 of rule 128 is as under:

“(9) The statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139:Provided that where the return has been furnished under sub-section (8A) of section 139, the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) to the extent it relates to the income included in the updated return, shall be furnished on or before the date on which such return is furnished.”

- ❑ In the above rule the time limit has been provided for 2 types of return, **Original return and Updated return.**

BEFORE

Filing
of
form 67

AFTER

In case of original
Return
Sec 139(1)

Assessee was required to file Form
67 before the due date of Filing
income tax return under sec 139(1)

Assessee can file Form 67 before
the end of relevant assessment
year

In case of updated
Return
Sec 139 (8a)

No concept of Updated Return

Form 67 can be filed before filing the
updated return only for foreign tax
credit on additional income



e-Filing *Anywhere Anytime*
Income Tax Department, Government of India

Applicability Of Amendment

- ❑ This amendment is effective from the **1st day of April, 2022** so that it applies to all the claims of foreign tax credit furnished with Income tax return for financial year **2022-2023**. **Thus, this amendment will not be applied retrospectively.**
- ❑ It is important to note that still, the due date to file Form 67 has been provided in rule 128 and **not in Income tax act** and there have been various instances wherein it has been held that due date cannot be prescribed in rules and the due dates mentioned are just directory in nature and not mandatory.
- ❑ Although the amendment has been made in the rules and is a welcoming relaxation provided by Income Tax department but if the assessee fails to file Form 67 within the prescribed time-limit he can still challenge and claim the credit on the basis of certain case laws as mentioned in next slide.

❑ **Some of the case laws which support the above contention are as under:**

1. Ms. Brinda Rama Krishna v. Income-tax Officer [2022] 135 taxmann.com 358(Bangalore – Trib.)
2. 42 Hertz Software India (P.) Ltd. v. Assistant Commissioner of Income-tax[2022] 139 taxmann.com 448 (Bangalore – Trib.)

❑ **Important points of the above mentioned case at serial no. 1 is as under:**

1. The Rules does not provide for disallowance of FTC in case of delay in filing Form No. 67.
2. Filing of Form No. 67 is not mandatory but a directory requirement.
3. DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act.

Link for earlier post on Form 67: [Brief Introduction about Form 67](#)

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