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Circular No. 30/2016

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Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

Foreign Tax & Tax Research Division - II

FT & TR-V Section

New Delhi, dated 26th of August, 2016

Subject : Streamlining the process of No Objection Certificate (NOC), Port Clearance Certificate (PCC), voyage return and voyage assessment in the case of Foreign Shipping Companies (FSCs).

Representations have been received in the Board regarding the procedural difficulties faced by foreign shipping companies in issuance of Port Clearance Certificate (PCC) required as per provisions of Section 172 of the Income-tax Act, 1961 (the Act). Board had earlier issued Circular No 732 dated 20.12.1995 to do away with procedure of obtaining NOC for each voyage in cases covered by full DTAA (Double Taxation Avoidance Agreement) relief. However, it has been represented that

(a) FSCs (Foreign Shipping Companies) having treaty benefits are still required to approach Port Assessing Officer (at all ports of call) for issuance of No Objection Certificate (NOC) for every vessel at the port for onward submission to Customs department at the port

(b) no uniform practice is being followed by the Port Assessing officers in giving NOC to each voyage and also in making the assessment of voyage return.

2. Section 172 of the Act provides for a self contained code for assessment of shipping business of non residents. As per the scheme of taxation contained in the said section, income of a foreign shipping company carrying passengers, livestock, mail or goods and leaving from an Indian port shall be deemed to be seven and a half percent of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf. The said section further lays down that before the

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departure of such a ship from the port, the Master of such a foreign ship shall prepare and furnish a return of the voyage, to the Assessing Officer (AO) or shall make sufficient and necessary arrangement that the return is filed within 30 days of the ship leaving the port. The AO, upon receipt of the return, shall assess the income on account of the voyage and determine the tax payable on the same. It is the duty of the Customs authorities to ensure that port clearance is not given to the ship unless (a) either the tax due on the income has been paid or (b) satisfactory arrangements have been made for the payment of such taxes. Section 172 of the Act also lays down that the owner or the charterer of the ship may claim before the expiry of the assessment year relevant to the financial year in which the ship has sailed, that an annual assessment of its total income be made under the provisions of other sections of the Act and in such a case the tax paid before each voyage shall be treated as payment of advance tax for that assessment year.

3. There are instances where the foreign shipping company is covered by a DTAA of India with other country wherein the taxing right on the shipping income of the foreign shipping company is wholly with the other country. In such cases, the foreign shipping company is not required to make any payment of taxes in respect of, either the voyage returns filed under section 172(3) or the annual return filed under section 139 read with section 172(7) of the Act. On representation to the Board to do away with procedure of obtaining NOC for each voyage in cases covered by DTAA, Circular No 732 dated 20.12.1995 had been issued. As per the said Circular, the AO is competent to issue annual NOC valid for a year after carefully verifying applicability of DTAA. It was expected that the filing of voyage return and the issue of Port Clearance Certificate (PCC) to such foreign shipping companies shall happen in a routine and expeditious manner.

4. It has been represented now that no uniform practice is being followed by the port Assessing Officers in giving NOC for each voyage and also in making the voyage assessment in this regard. Further, it is represented that at some of the ports, annual NOC issued by the jurisdictional AO is being honoured and port clearance and voyage return assessment are being done in a routine manner, whereas at some other ports, the port Assessing officers are not honouring the annual NOC and are still insisting for documentation such as submission of tax residency certificate, proof of effective management etc before the NOC leading to the port clearance is issued.

It has been represented that in these cases, the insistence on filing details is leading to duplication of work as these documents have already been filed before and verified by the jurisdictional AO at the time of issue of annual NOC. It has also been stated that the procedure of obtaining NOC from the officer having jurisdiction over the port creates logistical difficulties for FSCs as the Port assessing officer is normally situated at a considerable distance from the jurisdictional AO.

5. The matter has been examined by the Board and following guidelines are issued for streamlining the process.

6. Circular 732 dated 20.12.1995 provides for issue of annual NOC by AO after carefully verifying the applicability of DTAA. Annual NOC is to be issued in cases where no tax is leviable on foreign shipping company due to the DTAA. The AO before whom the request for annual NOC is filed by the foreign shipping company should accordingly examine the applicability of DTAA to the foreign shipping company before issue of annual NOC. The annual NOC should clearly mention the names of the ships owned by the foreign shipping company, names of the ships chartered or names of shipping companies from which ships are chartered by the foreign shipping company and names of the members of the pool and their ships which are part of this pool. The AO should continue to take the declaration from the applicant that the treaty benefits would be available only in respect of freight in international traffic.

7. **Issue of Voyage NOC**

The issue of voyage NOC, and its requirement, which is dependent upon the resultant taxability of the freight relating to the voyage shall be dealt with as below in three different ways:

(i) In cases wherein entire cargo belongs to a single foreign shipping company which belongs to a country with full DTAA relief, the annual NOC issued by the jurisdictional AO will also serve the purpose of voyage NOC. In such cases the requirement of voyage wise NOC has already been done away through Circular 732 of 1995. It is further clarified that there is no need for a voyage NOC from the Income Tax Officer having jurisdiction over the port and the Customs Authorities

shall accept annual NOC issued by jurisdictional AO before issuing PCC to such ships.

(ii) In cases wherein the cargo belongs to a number of foreign shipping companies, each belonging to a country with full DTAA relief and to each of which annual NOC has been issued by their respective jurisdictional AO, voyage NOC is not required. To facilitate verification by Customs Authorities before issue of PCC in such cases, a certificate from a Chartered Accountant (CA) as per enclosed proforma would be required to be filed by the Master of the ship before concerned Customs authority. The CA certificate will be accompanied with annual NOC for all the foreign shipping companies to which the cargo in the ship belongs.

(iii) In any other case, the Master of the ship would be required to obtain a voyage NOC from the Officer having jurisdiction over the port. The Customs Authorities shall issue the PCC only upon production of such NOC or an authenticated copy.

8. Filing of voyage return

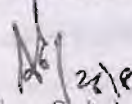
For a voyage where cargo belongs to a number of foreign shipping companies, even if all of them belong to treaty countries with full DTAA relief, there shall be different AOs for each such foreign shipping company. Since the voyage return is in respect of the ship and its cargo etc, it will not be possible to file it with jurisdictional AOs of the various foreign shipping companies. Thus, in all such cases, the voyage return shall continue to be filed with the AO having jurisdiction over the port. Since the voyage return has to be filed within one month of the departure of the ship, it does not, anyway affect the timely departure of the ship from the port.

9. Voyage Assessment

In cases where a foreign shipping company eligible for full treaty relief prefers to be assessed on a voyage-wise basis i.e., on a ship basis, the Port Assessing Officer before whom such a voyage return has been filed shall give due credit to the annual NOC issued by the AO. Assessment in such cases must be expeditiously done and without conducting any further verification with respect to the eligibility of the foreign shipping company as regard to treaty benefits and the annual NOC issued by the jurisdictional AO must be honoured. In other cases, i.e., in a situation where the foreign shipping company files an intimation under section 172(7) expressing its

willingness to be assessed on an annual basis instead of on a voyage basis, the voyage assessment before the port Assessing Officer should cease and the port Assessing officer shall intimate the details of voyage and freight in respect of that foreign shipping company to the Assessing Officer issuing the annual NOC.


10. The authorities concerned are requested to take note of the above guidelines.


(Vinay Sinha)

Director (FT & TR-V), Government of India.

To

- (a) Chairperson, Members and all other Officers of the Central Board of Direct Taxes.
- (b) Pr. CCIT/Pr.DGIT/CCIT/DGIT with a request to circulate the same amongst all Officers in their Region / Charge.
- (c) Commissioner (Media & Technical Policy) and Official Spokesperson, CBDT with a request to give wide publicity to this Circular
- (d) Addl Director General of Income-tax (PR, PP & OL)
- (e) ITCC Section of CBDT (3 copies)
- (f) ADG (Systems)-IV for uploading on the Departmental website.
- (g) Database Cell for uploading on the IRS Officers website.
- (h) Hindi cell of Department of Revenue, for Hindi translation.
- (i) Guard File.


(Vinay Sinha)

Director (FT & TR-V), Government of India

Certificate to be furnished by a Chartered Accountant

To
The Customs Officer
_____ Port
India

Sub: Verification certificate issued in terms of Circular No 30 dated 26/08/2016 of CBDT.

This is to certify that the _____ [Name of the Vessel] sailing from _____ [Name of the Port] on _____ [tentative date of sailing] is carrying cargo belonging to several foreign shipping companies, each of which is eligible for full relief from taxation in India on shipping income under a Double Taxation Avoidance Agreement (DTAA) of India. This certificate has been issued at the request of the Master of the Ship _____ [Name of the vessel] and has been given on the basis of the annual NOC issued to each such foreign shipping company as detailed below:

Name of the foreign shipping company

Date of issue of NOC

(Signature)

Date :

Place :

Encl : Copies of annual NOC



(The certificate should be on the letter head of the CA firm and should be signed by the CA, and his membership number with ICAI should be indicated.)