

EY Tax Alert

CBDT notifies conditions for presumptive taxation of foreign cruise ship operators in India

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Executive summary

This Tax Alert explains the Notification¹ dated 21 January 2025 issued by the Central Board of Direct Taxes (CBDT)² prescribing conditions for taxation of non-resident cruise ship operators in India under a new presumptive tax regime³ (the new tax regime) applicable from tax year 2024-25 onwards.

The Finance (No. 2) Act, 2024 ('FA 2024') introduced the new tax regime, for non-residents engaged in the business of operating cruise ships. The new tax regime, subject to conditions to be prescribed by rules, deems 20% of the specified amounts as income of the non-resident which is taxable at the corporate tax rate of 35%⁴ applicable for foreign companies.

Further, FA 2024 also introduced tax exemption⁵ for foreign company earning income from lease rentals of cruise ships paid by specified company subject to conditions prescribed thereunder. The specified company is a foreign company which (i) operates cruise ships in India, (ii) opts for the new tax regime and (iii) is also a subsidiary of the same holding company as the foreign company earning lease rentals.

The Notification provides conditions laying down technical specifications, route specifications, passenger carriage and compliance with regulatory guidelines for cruise ship operators under the new tax regime.

¹ No. 9/2025/F.No.370142/18/2024-TPL dated 21 January 2025

² The apex body for administration of direct taxes in India

³ Section 44BBC of the Income-tax Act, 1961

⁴ Plus surcharge and cess, as applicable

⁵ Section 10(15B) of the Income-tax Act, 1961



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Background

- ▶ Section ('S.') 44B of the Income-tax Act, 1961 ('ITA') provides for presumptive tax regime deeming 7.5% of the specified amount as income of non-resident from shipping business, including carriage of passengers ("old tax regime").
- ▶ FA 2024 introduced a complementary set of provisions for promotion of domestic cruise ship operations by non-residents. As per Explanatory Memorandum, the aim is to make India an attractive cruise tourism destination amongst global tourists and to popularize cruise shipping with Indian tourists. It is expected that participation of international cruise-ship operators in this sector will encourage development of this sector and enable access to international best practices. Towards this object, the complementary set of provisions is intended to provide clarity, certainty and simple structure for business of cruise shipping, which may be operating as multi-layer entities.
- ▶ The first provision is S. 44BBC that provides for new tax regime for non-residents engaged in the business of operation of cruise ships thereby providing for consequential carve out from old tax regime. The new tax regime is effective from tax year 2024-25 onwards.
- ▶ The new tax regime, subject to conditions prescribed, deems 20% of the following specified amounts as income of the non-resident from operation of cruise ship:
 - ▶ **Amount paid or payable** to the non-resident or any other person on his behalf on account of carriage of passengers; and
 - ▶ **Amount received or deemed to be received** by or on behalf of the non-resident on account of carriage of passengers
- ▶ Consequently, the above referred deemed income is subject to tax at corporate tax rate of 35%⁶ applicable for foreign companies
- ▶ The new tax regime is subject to compliance with conditions to be prescribed by CBDT.
- ▶ The FA also introduced tax exemption vide S. 10(15B) in the hands of foreign company i.e. lessor of the cruise ship. The tax exemption is available to the foreign company, subject to satisfaction of below conditions, in respect of income from lease rentals:

- Rental income is in connection with lease of cruise ship(s) to non-resident operator of cruise ship ('Lessee')
- Rental income is received or accrues or arises in India on or before 31 March 2030
- The Lessee opts to pay tax under S. 44BBC i.e. the new tax regime
- The Lessor and Lessee are subsidiaries of the same holding company

Recent update

- ▶ The CBDT has issued Notification to insert new Rule 6GB ("Rule") in the Income tax Rules 1962 to prescribe conditions (mentioned below) to be satisfied by non-residents covered under the new tax regime. The new Rule is effective from 21 January 2025.

Conditions prescribed

- ▶ Non-resident operates a passenger ship for leisure and recreational purposes and such passenger ship satisfies the following criteria (herein after referred to as the 'technical specification'):
 - ▶ Has a carrying capacity of more than 200 passengers or length of 75 meters or more,
 - ▶ Has appropriate dining and cabin facilities for passengers
- ▶ Non-resident operates such ship on scheduled voyages or shore excursions touching at least two different sea ports of India or the same sea port twice
- ▶ Non-resident operates such ship primarily for carrying passengers and not for carrying cargo; and
- ▶ Non-resident operates such ship as per the procedures and guidelines if any, issued by the Ministry of Tourism and the Ministry of Shipping.

⁶ Plus surcharge and cess, as applicable

Comments

The new tax regime along with tax exemption for lease rentals up to tax year 2029-30 is intended to provide an attractive tax regime for a foreign shipping group where one subsidiary leases the cruise ship to another subsidiary for operating it within Indian sea shores - where both subsidiaries are foreign companies. It appears to be an inclusive system where, at a consolidated level, only the Lessee (that is, the non-resident cruise ship operator) is obligated to pay tax on deemed income. But it is significant to note that while new tax regime will operate beyond tax year 2029-30, the tax exemption for lease rentals is presently available till tax year 2029-30

While the term cruise ship is not specifically defined, the Notification clarifies that income of non-resident cruise ship operator shall be governed by the new tax regime subject to satisfaction of all the conditions i.e. the technical specifications and other conditions as prescribed.

On a conjoint reading of old and new tax regime, it appears that cruise ship satisfying the above referred conditions shall be eligible for new tax regime, whereas one which does not fulfil any of the above referred conditions will continue to fall under old tax regime. However, clarity from CBDT will be much desirable to provide certainty to non-residents engaged in the business of operation of cruise ships.

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