REFUND OF EXCESS TAX UNDER INCOME TAX ACT

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1. Who can claim income Tax Refund?[Section 237]

If any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf for any assessment year exceeds the amount which he is chargeable under the Income-tax Act for that year, he shall be entitled to a refund of the excess tax. **Section 237 of the Income Tax Act, 1961** deals with Income Tax refund of excess tax paid by the assessee. Up to August 31, 2019 claim of refund was made in Income Tax Form 30 & verified in the prescribed manner. However, with the advent of e-transfer of refunds, it can now be claimed by simply filing the ITR. The ITR should further be verified, either physically or electronically within 120 days of filing. Please note that the excess tax for which a refund is claimed should be reflected in Form 26AS. Moreover, the refund is subject to verification by the Income Tax Department. It is credited only if the refund claim is found to be valid by the department.

2. Who can claim Income Tax Refund: [Section 238]

Where an assessee has submitted any return of income and any refund of tax is due, such refund shall be granted by the Assessing Officer on his own. The assessee is not required to file any claim for such refund. Similarly, if any refund arises due to an order of appeal, rectification of mistakes, revision by CIT or appeal to the High Court, the refund shall be granted by the Assessing Officer himself. In this case also, the assessee is not required to file any claim for refund of tax.

3. Can a Person other than the Assessee Claim Refund of Tax? [Section 238]

Although only the assessee is entitled to claim refund, however, in the following cases the refund can be claimed by a person other than the assessee:

(i) where the income of one person is included in the total income of any other person under any provision of the Income-tax Act (section 60 to 64), the latter alone shall be entitled to a refund in respect of such income;

(ii) if a person is unable to claim tax refund due to death, incapacity, insolvency, liquidation (by liquidator) or other cause, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refund for the benefit of such person or his estate.

4. Form and Period within which Claim for Refund of Tax should be made [Section 239 and Rule 41]

With effect from September 1, 2019, the Finance (No. 2) Act, 2019 has amended this provision to provide that the refund can be claimed only through filing of return of income within the time limit prescribed under Section 139.

Extract of Clause 55 of Finance Bill 2019

55. Amendment of section 239.
In section 239 of the ***Income-tax Act****, with effect from the 1st day of September, 2019,––*

(a) in sub-section (1), for the words "in the prescribed form and verified in the prescribed manner", the words and figures "by furnishing return in accordance with the provisions of ***section 139****" shall be substituted;*

(b) sub-section (2) shall be omitted.

Note on Clause 55 of Finance Bill 2019

Clause 55 *of the Bill seeks to amend section 239 of the Income-tax Act relating to form of claim for refund and limitation. Sub-section (1) of the said section provides that every claim of refund under Chapter XIX of the said Act shall be made in such form and verified in the such manner as may be prescribed.*

It is proposed to amend the said sub-section so as to provide that every claim for refund under the said Chapter shall be made by furnishing return in accordance with the provisions of section 139.

It is further proposed to omit sub-section (2) of section 239. These amendments will take effect from 1st September, 2019.

4.2. Condonation of delay in filing the Claim of Refund:

The delay in filing the claim may be condoned by the Assessing Officer and the claim may be disposed off according to merits, under certain circumstances. The Central Board of Direct Taxes (CBDT) has issued the **Circular 9/2015 [F.NO.312/22/2015-OT], dated 9th June 2015** for dealing the matters relating to applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof. This Circular is issued in suppression of all earlier Instructions/ Circulars/ Guidelines issued by the CBDT relating to above discussed matter of condonation. The Circular containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters. The details in this regard (as given in said Circular) are as follows:

4.2.1. The Principal Commissioners of Income-tax / Commissioners of Income-tax (Pr.CsIT / CsIT) shall be vested with the powers of acceptance / rejection of such applications / claims if the amount of such claims is not more than Rs. 10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax / Chief Commissioners of Income-tax (Pr.CCsIT / CCsIT) shall be vested with the powers of acceptance / rejection of such applications / claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the CBDT.

4.2.2. No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the CBDT. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

4.2.3. In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.

4.2.4. The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT / CCsIT / Pr.CsIT / CsIT in case of such claims will be subject to Following conditions:

- At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.
- The Pr. CCIT / CCIT / Pr.CIT / CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

4.2.5. A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/ CCsIT/ Pr.CsJT / CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

- The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.
- No interest will be admissible on belated claim of refunds.
- The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.

4.2.6. In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

4.2.7. The Circular will cover all such applications/claims for condonation of delay under section 119(2)(b) which are pending as on the date of issue of the Circular.
8. The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 1 above and issue suitable directions to them for proper implementation of the Circular. However, no review of or appeal against the orders of such authorities would be entertained by the CBDT.

5. Income Tax Refund in case of appeal [Section 240]

As per section 240, in a case where the Income Tax refund becomes due as a result of any order passed in appeal or other proceeding under the Act, the Assessing Officer shall, except as otherwise provided in the Act, refund the amount to the taxpayer without his having to make any claim in that behalf.

However, where –

- an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment.
- an assessment is annulled, the refund shall become due only of the amount of the tax paid in excess of the tax chargeable on the total income returned by the taxpayer.

6.Interest on Income Tax refund: [Section 244A]

As per section 244A

- Where the refund arising to the taxpayer is out of any tax deducted / collected at source or tax paid by way of advance tax, then the taxpayer shall be entitled to interest calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the 1st day of April of the assessment year to the date on which the refund is granted if the return of income is furnished on or before the due date of filing of

return specified under section 139(1) otherwise interest shall be allowed from the date of furnishing of return of income to the date on which the refund is granted

- Where the refund arising to the taxpayer is out of tax paid by way of self-assessment tax then the taxpayer shall be entitled to interest calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted.

  However, no interest shall be payable if the amount of refund is less than 10% of the tax as determined under section 143(1) or tax determined under regular assessment.

- In any other case (i.e., a case in which refund is due to reasons other than those stated above), interest shall be calculated at the rate of one-half percent for every month or part of a month. Interest in such a case shall be allowed for a period commencing from the date / dates (as the case may be) of payment of the tax or penalty to the date on which the refund is granted.

  The expression **"date of payment of tax or penalty"** means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

  Note: in cases when assessment has been reframed under provisions of sections 141(1), 143(3), 154,155. 250, 254, 260, 262 etc., the amount on which the interest was payable was increased / decreased; the interest portion will also increase / decrease accordingly. The Assessing officer may issue demand notice for recovery of excess interest paid in those cases. The denial of interest by the department has not been made unless an opportunity is given to the assessed of hearing.

Assessee has deducted tax source erroneously under Section 194A in respect of payment to IDBI, though no tax was required to be deducted from such payment. On assessee's request, the department granted refund of the amount deducted. The court held that on such refund interest will not be available under section 244A. - **Universal Cables Limited v. At CIT [2010] 191Taxman 370(MP),**

7. Withholding of Refund of Tax in certain Cases [Section 241A]

Every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under the provisions of section 143(1) and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under 143 (2) in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made.

8. Set-Off / Adjustment of Income Tax Refund Against Outstanding Tax Dues [Section 245]

The Assessing Officer empowers under section 245 to adjust Income Tax refund due to any assessee of any assessment year against any outstanding tax due of the previous years. But no adjustment of refund against tax due will be made without giving a notice to the assessee in this regard.

If Assessing Officer has adjusted the refund against tax due without proper notice in this regard to the assessee, then it will be against the provisions of Section 245 and liable to be quashed.

When no intimation in writing is given by the AO prior to proposed action of set off, the adjustment will be in violation of section 245 – **Genpact India v. CIT (2012) 17 Taxmann.com 145 (Delhi) / State Bank of Patiala v. CIT (1999) 105 Taxman 326**

No adjustment of refund due to assessee can be made against outstanding demand without service a proper notice u/s 245 and without giving proper opportunity of hearing to petitioner - **Shiv Narain Shivhare v. Asst. CIT (1996) 88 Taxman 93 / 222 ITR 620(MP)**

The same procedure as above to be followed even in case of refund to be adjusted by CPC at Bengaluru against an outstanding demand of a taxpayer – **Court on its own motion v. CIT (2013) 214 Taxman 335 (Del)**

Revenue cannot make adjustment contrary to procedure prescribed under Section 245 based on the wrong data uploaded by the Assessing Officer. One the amount is correctly and rightly reflected in Form 26AS, small or technical mismatch in return should not be make a ground to deny credit of amount paid. In cases TDS data reflected in Form 26AS requires rectification, notice should be issued to the assessee to revise or correct mistake and only if necessary rectification or correction is made, an order under section 143(1) should be passed and demand should be raised - **As decided in the case Court on its own motion v. CIT [2012] 210 taxman452 (Delhi),**

Where certain assessment had been held to be bad, the amount of tax recovered for such assessment years which become refundable cannot be retained by the department for being adjusted against tax due in respect of other assessment years - **S.S. Ahluwalia v. ITO [1996] 135 CTR (Gauhati) 225,**

Intimation u/s 143(1) is not 'intimation' for purposes of section 245 – **Japson Estate (P) Ltd v. CIT (2006) 285 ITR 40 (A)**

A demand outstanding against any other person cannot be set off against refund due to the taxpayer – **Archana Sukla v. CIT (2000) 112 Taxman 573 (Delhi)**

9. Tax Treatment of Income Tax Refund

Amount of income tax refund corresponds to the excess tax that was paid cannot be treated as an income & not taxable. However, the interest received on excess income tax refund is considered as an income under head 'Income from Other Sources' and is subjected to income tax as per the applicable tax slab applicable to assesee.