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EY Tax Alert

CBDT issues new Circular substituting old Circular on refund procedure for excess TDS on payments to residents



Executive summary

This Tax Alert summarizes a recent circular issued by the Central Board of Direct Taxes (CBDT), Circular No. 2/2011 [F. No. 385/25/2010-IT(B)] (new Circular) dated 27 April 2011, outlining the procedure for refund of excess payment of tax deducted at source (TDS) from payments to residents.

The new Circular is applicable for refunds pertaining to the period up to 31 March 2010. The procedure for refunds for the period from 1 April 2010 is governed by a specific provision in the Indian Tax Laws (ITL) dealing with centralized processing of quarterly TDS statements. The refund for the period after 1 April 2010 will be granted based on data furnished in the statements, subject to rectification of apparent inconsistencies, without the requirement of a separate claim for refund.

The new Circular supersedes the existing CBDT Circular No. 285 dated 21 October 1980 (old Circular) which covered refund of excess TDS in respect of limited categories of payment from which withholding was made. The new Circular now covers all categories of payments to residents.

Under the old Circular, no specific time limit was provided for claiming the refund of excess TDS by the deductor. Under the new Circular, claim for refund of excess TDS needs to be made within a period of two years from the end of the financial year in which the tax was deductible at source. This effectively means that the claim for refund can be made only for financial year (FY) 2009-10 on or before 31 March 2012. The claims for refund for FY 2008-09 and

earlier years may need to be made independent of the new Circular.

Background

- ▶ Prior to 1 April 2010, there were no specific provisions in the ITL dealing with the procedure for refund of excess payment of TDS. The procedure was governed by the old Circular which permitted refund of excess TDS, subject to necessary administrative safeguards. The old Circular, however, provided for refund of withholding only from limited categories of payments like salaries, interest, contract payments, etc. Basically, the old Circular covered withholding provisions which subsisted on the ITL in 1980.
- ▶ After the old Circular, new provisions on withholding on additional categories of payments (like fees for professional or technical services, commission or brokerage, rent, etc.) to residents were introduced in the ITL. Representations were, therefore, made to the CBDT to include the new categories of payments within the scope of the refund procedure.
- ▶ Considering the representations, the CBDT has issued the new Circular in supersession of the old Circular to cover refund of excess TDS in respect of withholding under all categories of payments to residents.

Key features of the procedure for refund under the new Circular

- ▶ The excess payment to be refunded will be the difference between:
 - ▶ The actual payment made by the deductor to the credit of the Central Government and
 - ▶ The tax deductible at source^[1]
- ▶ If excess payment is discovered by the deductor during the relevant financial year, the present system of filing quarterly statements of TDS permits the adjustment of such excess in the next quarter of the same financial year.
- ▶ If the excess payment is discovered beyond the relevant financial year, the claim for refund needs to be made to the Tax Authority. Presently, no form is prescribed for putting up such a claim. In the circumstances, the claim needs to be put up by a simple letter application with necessary supporting documents.
- ▶ Furthermore, no claim of refund can be made after two years from the end of the financial year in which tax was deductible at source. The old Circular did not provide any specific time limit for putting up such a claim.

^[1]The old Circular referred to 'the tax deducted at source or that deductible, whichever is more'.

Administrative safeguards to be exercised by the Tax Authority

- ▶ The old Circular provided for grant of refund after adjusting existing tax liability, if any, of the deductor, which is retained in the new Circular.
- ▶ To prevent duplicated claim of credit of TDS by deductee and refund by deductor, the new Circular provides for the following additional administrative safeguards to be exercised by the Tax Authority:
 - ▶ The applicant deductor is required to establish before the Tax Authority that:
 - ▶ The excess payment is a case of genuine error and that the error had occurred inadvertently.
 - ▶ The TDS certificate for the refund amount requested has not been issued to the deductee(s).
 - ▶ The credit for the excess amount has not been claimed by the deductee(s) in the return of income or the deductee(s) undertakes not to claim such credit.

- ▶ Prior administrative approval of the higher Tax Authority needs to be obtained depending upon the quantum of refund as follows:

Quantum of refund	Approving Higher Tax Authority
From INR 0.1m to 1m	Additional Commissioner of Income Tax
Above INR 1m	Commissioner of Income Tax (TDS)

Effective period of the refund procedure under the new Circular

- ▶ The procedure outlined in the new Circular is applicable for claim of refunds for the period up to 31 March 2010.
- ▶ Having regard to the requirement of making application within the two year time limit, this effectively means that the claim for refund can be made only for FY 2009-10 on or before 31 March 2012. The claims for refund for FY 2008-09 and earlier years may need to be made independent of the new Circular.
- ▶ The procedure for refunds for the period from 1 April 2010 is governed by a specific provision in

the ITL (Section 200A) which provides for centralized processing of quarterly TDS statements under a scheme to be made by the CBDT. The refund of excess payment of TDS under this procedure will be granted based on data furnished in the statements, subject to rectification of apparent inconsistencies, without the requirement of a separate claim for refund.

Some points which deductors need to consider

The deductors will need to consider the following points with reference to the new Circular:

- ▶ The new Circular is applicable for refund of excess TDS from payments to residents. In case of non-residents, the procedure is outlined in a separate Circular No. 7/2007 dated 23 October 2007. Even here, the refunds for the period from 1 April 2010 will be governed by the centralized processing procedure.
- ▶ The new Circular covers refund of excess TDS alone and does not refer to tax collected at source (TCS).
- ▶ The claim for refund can be made by the deductor if he has paid TDS in excess of tax correctly deductible and has not issued TDS certificate(s) to the deductee(s) for such excess. Illustratively, if TDS paid is INR100 and tax correctly deductible is

INR10, then refund can be claimed for excess TDS of INR90 if TDS certificate is issued for INR10. If TDS certificate is issued to the deductee for INR100, then the deductor cannot claim refund under this new Circular.

Comments

The long awaited new Circular provides clarity on the procedure for refund of excess TDS and removes ambiguity in respect of refund of TDS from categories of withholding which were not covered in the old Circular. Having regard to the two year time limit, deductors may need to expedite the process for claiming refund of excess TDS.

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