

PROCEDURE FOR REFUND OF EXCESS TDS DEDUCTED/ PAID

CIRCULAR NO. 2/2011 [F.NO. 385/25/2010-IT(B)], DATED 27-4-2011

The procedure for regulating refund of amount paid by the deductor in excess of the tax deducted at source (TDS) and/or deductible is governed by Board circular No. 285, dated 21-10-1980.

2. Subsequent to issue of circular No. 285, new sections have been inserted under Chapter XVII-B of the Income-tax Act, 1961. References have been received by the Board regarding inclusion of these sections also for the purpose of issue of refund of excess amount of the TDS deducted/deductible.

3. In consideration of the above and in supersession of the circular No. 285, dated 21-10-1980, the Board prescribes the following procedure for regulating refund of amount paid in excess of tax deducted and/or deductible in respect of TDS on residents covered under sections 192 to 194LA of the Income-tax Act, 1961. This circular will not be applicable to TDS on non-residents falling under sections 192, 194E and 195 which are covered by circular No. 7/2007 issued by the Board.

4. The excess payment to be refunded would be the difference between:

- (i) the actual payment made by the deductor to the credit of the Central Government; and
- (ii) the tax deductible at source.

4.1 In case such excess payment is discovered by the deductor during the financial year concerned, the present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year.

4.2 In case, the detection of such excess amount is made beyond the financial year concerned, such claim can be made to the Assessing Officer (TDS) concerned. However no claim of refund can be made after two years from the end of financial year in which tax was deductible at source.

5. However, to avoid double claim of TDS by the deductor as well as by the deductee, the following safeguards must be exercised by the Assessing Officer concerned:

5.1 The applicant deductor shall establish before the Assessing Officer that:

- (i) it is a case of genuine error and that the error had occurred inadvertently;
- (ii) that the TDS certificate for the refund amount requested has not been issued to the deductee(s); and
- (iii) that 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.

5.2 Prior administrative approval of the Additional Commissioner or the Commissioner (TDS) concerned shall be obtained, depending upon the quantum of refund claimed in excess of Rupees One Lakh and

Rupees Ten Lakh respectively.

5.3 After meeting any existing tax liability of the deductor, the balance amount may be refunded to the deductor.

6. In view of provisions of section 200A of the Income-tax Act prescribing processing of statement of TDS and issue of refund with effect from 1-4-2010, this circular will be applicable for claim of refunds for the period upto 31-3-2010.

Analysis of CIRCULAR NO. 2/2011 [F.NO. 385/25/2010-IT(B)], DATED 27-4-2011

If a deductor has deposited excess amount of TDS, the procedure for getting refund was given in Board Circular 285 dated 21-1-1980. Now CBDT has issued new circular in this respect.

- This Circular 2/2011 is issued in suppression of circular No 285 / 21-10-1980
- It covers TDS sections 192 to 194LA
- It does not cover TDS on non-resident payments i.e. section 192, 194E and 195 (which are separately covered by circular No. 7/2007)
- It covers refunds for the period upto 31-03-2010 .
- Refunds for period thereafter will be covered under provision of section 200A which prescribes processing of TDS Statements

Excess to be refunded :

The excess payment to be refunded would be the difference between:

- the actual payment made by the deductor to the credit of the Central Government; and
- the tax deductible at source

Excess payment discovered during financial year

In case such excess payment is discovered by the deductor during the financial year concerned, the present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year.

Excess payment discovered after financial year

- In case, the detection of such excess amount is made beyond the financial year concerned, such claim can be made to the Assessing Officer (TDS) concerned.
- However no claim of refund can be made after two years from the end of financial year in which tax was deductible at source.

Safeguards to avoid double claims

To avoid double claim of TDS by the deductor as well as by the deductee, the following safeguards must be exercised by the Assessing Officer concerned:

The applicant deductor shall establish before the Assessing Officer that:

- (i) it is a case of genuine error and that the error had occurred inadvertently;

- (ii) that the TDS certificate for the refund amount requested has not been issued to the deductee(s); and
- (iii) that 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 approval of the Additional Commissioner is required for refund in excess of Rs. 1 Lakh

Prior approval of the Commissioner is required for refund in excess of Rs. 10 Lakhs

After meeting any existing tax liability of the deductor, the balance amount may be refunded to the deductor.