

Refund – Everyone wants it, not all get it!!

Income tax refund! Sounds quite familiar, doesn't it? Many of us would have received a refund from the income tax department in the past as well as many have claimed it but not received the same. So, let's discuss when and how does one get a refund along with the complexities involved?

- **What is Income Tax Refund?**

Every assessment year we all file our income tax returns (ITR) but most of us are not sure about how the process of claiming income tax refund works. What is important to note here is that, refund should only be claimed for the amount which is legitimately eligible and people need to come out of the perception that the entire tax deducted can be refunded back and in fact rather should be refunded. Ultimately, tax has to be paid by you on the income earned and only the excess tax which is being deducted already as TDS is eligible to be refunded back.

For the FY 2019-20, the last date of ITR filing has been extended due to COVID-19 from July 31, 2020 to November 31, 2020. Considering the increased spread of COVID-19, we can expect further extension but nothing is fixed or declared as of now. Similarly, the late date of ITR Filing for FY 2018-19 has been extended upto September 30, 2020.

You are eligible to receive income tax refund when you have paid more tax to the government than your actual tax liability. This usually happens when the advance tax, self-assessment tax paid or TDS deducted of the taxpayer is higher than the total tax liability of a taxpayer. This might happen due to various reasons.

- **Process to claim Income Tax Refund?**

A person can claim the refund of the excess tax paid/deducted during a financial year by filing his or her income tax returns for that year in the next year which is known as Assessment year for the previous financial year. So, for FY 2019-20 which has ended on 31/03/2020, the relevant assessment year in which the return is to be filed shall be AY 2020-21. Do not confuse AY (Assessment Year) with FY (Financial Year).

As per the Income Tax Act, 1961, a person (individual) is required to file his/her return in the relevant assessment year by July 31 (unless deadline extended) to claim the refund.

A person can file his/her return either by uploading the filled excel/java utility form or by providing the required data in the online forms (Online forms are only for those eligible to file ITR 1 or ITR 4 form). This means that persons filing ITR-1 or ITR-4 can directly prepare the return online on the portal and submit whereas person other than this have to prepare the ITR, generate java utility and upload the same to file the return.

Now, tax department has started providing pre-filled ITRs on the online platform. The ITR form is filled with information regarding salary income, interest income (in case TDS is deducted) and other details. If you are filing ITR using Excel/Java utility, then you can download XML file to pre-fill your ITR which will facilitate ITR Filing process.

Ensure your return is electronically verified through Aadhaar number OTP, EVC generated through bank account or physically verified by posting the signed ITR-V (acknowledgement) to Centralised Processing Centre (CPC) within 120 days of filing the return. This is an important step to be done.

Just by filing the return, the process is not complete. You have to verify the return as well to complete the process of ITR Filing.

IMP : Further, vide Circular No. 13/2020 dated 13/07/2020, the Central Board of Direct Taxes has provided a one-time relaxation for verification of e-filed returns for AY 2015-16 to AY 2019-20 that are pending due to non-filing of a valid ITR-V, either by sending a physical copy of ITR-V to CPC, Bengaluru or through EVC/OTP modes by 30/09/2020.

- **What happens after the ITR (Income Tax Return) is filed?**

Once you file and verify your ITR, the I-T department will process it and verify the genuineness of the claim/s made.

Remember from now on, you need to ensure that the bank account in which you wish to receive the refund amount is pre-validated. The tax department has previously announced that they will issue e-refunds to the bank accounts in which PAN is linked and is pre-validated on the e-filing website. So, another important aspect has been added which needs to be done in order to get the refund.

After processing of return, an intimation will be sent to you depending on the outcome of the processing. In most cases, intimation under section 143(1) is sent to you disclosing any one of the following:

- (a) That your tax calculation matches that of the tax department and no further tax is payable by you; or
- (b) That your calculation does not match that of the tax department and there is additional tax (called tax demand) payable by you or your refund claim is rejected or accepted partially i.e. reduce amount; or
- (c) That your calculation matches that of the tax department and refund claim is accepted by it.

In case of e-filed returns, the intimation is sent to you via email. When this email is sent, normally a SMS stating that your ITR is processed is also sent to your registered mobile number. In case the department wants more information or your case is picked up for scrutiny then a notice under a different section may be sent to you instead of under section 143(1). What is pertinent to note here is that email-ID and mobile number shall be mentioned correctly so that important communication from the department shall not get skipped.

In case refund due to you is accepted, the intimation also states amount of refund that is payable. The department provides the refund reference number.

One can track the status of his/her refund by visiting <https://tin.tin.nsdl.com/oltas/refundstatuslogin.html>.

Alternatively, one can track the refund status by logging in at the income tax e-filing website and clicking on the Refund/Demand Status under the 'My Account' tab.

- **Early Processing of return leads to early refund receipt**

No doubt, a taxpayer has a time limit of 120 days from the date of return filing to verify his return. The earlier you get the verification done; the earlier CPC will process your return. Once the returns are processed by CPC at primary level for arithmetical errors etc, refund will be issued to the taxpayer accordingly. If verification of return itself is delayed, processing of return and issue of refund too will be delayed. Further, e-verification is faster compared to physical verification. So, the 2nd part of ITR filing is the verification part and this should be done as soon as possible to get the refund processed at the earliest.

- **Does the Government pay interest of Refunds?**

The answer is YES, but with terms and conditions.

If refund is due to a taxpayer, section 244A states that interest shall be payable to the taxpayer/assessee *subject to one major terms and conditions*, which is “If the return is filed on or before the due date i.e. July 31st (or within extended due date) of the AY relevant to the FY for which the return is filed.”

However, as per section 244A of the Income Tax Act, interest on Income Tax Refund is to be calculated as under:

*(1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, **simple interest** thereon calculated in the following manner, namely :—*

*(a) where the refund is out of any tax collected at source under section **206C (TCS)** or paid by way of **advance tax** or treated as paid under **section 199 (TDS)**, during the financial year immediately preceding the assessment year, such interest shall be calculated at the **rate of one-half (0.5%) per cent for every month or part of a month comprised** in the period,—*

(i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139; or

(ii) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (i) [this is the case where return is filed after the due date];

*(aa) where the refund is out of any tax paid under section **140A (Self Assessment Tax)**, such interest shall be calculated at the rate of **one-half (0.5%) per cent for every month or part of a month** comprised in the period, 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:*

Provided that no interest under clause (a) or clause (aa) shall be payable, if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 143 or on regular assessment;

*(b) in any other case, such interest shall be calculated at the **rate of one-half (0.5%) per cent for every month or part of a month** comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.*

NOTE: One must also remember that interest received on the refund amount is taxable. The assessee is required to include the interest paid to him on the refund, in his gross total income while filing return for the financial year in which he has received it.

- **Refund pending due to incorrect details?**

At times it happens that you have filed your ITR with a refund claim but you haven't received it. It may be because of the following reasons:-

- Once the department has done the initial assessment of your verified ITR, it has found that no refund is payable to you. This will reflect in the notice under section 143(1) of the Income Tax Act that the tax department will send you after processing your return. Therefore, if the notice shows a refund due to you then it will be issued but if the notice shows nil refund then it means that your refund claim was not accepted as your calculations did not match those of the department's.
- Department has processed your refund but you have not received it due to wrong bank details or cheque has not been received by you due to wrong address details. Nowadays, cheque system is not in place and the department is directly crediting the refund to the pre-validated bank account.
- Department has processed your return with the refund amount but the same is adjusted with any previous demand outstanding in your name. In case this is done, notice u/s 245 will be issued to yourself before adjusting the refund.

If your refund is pending, due to incorrect details provided by you, you can request the department to re-issue the same after giving the correct bank details.

You are required to sign in on the income tax e-filing website and raise the request for the same under the 'My Account' tab in the 'service request' option.

Once you have filed your ITR and verified it, regularly check the status of your return if you have made a refund claim in the return. This helps you track the processing of your ITR and refund (if any). It also helps check if you have made any mistake while filing the return.

- **Got an email from the Department to provide the bank details for early refund? BEWARE of SCAM Emails**

Taxpayers can receive plenty of scam emails regarding income tax refund along with requests to share their bank account details over an email for processing the refund. Please be careful of such emails and note that income tax department never asks for bank details over an email. They already have these details, already provided by you in your returns. So, make sure you exercise sufficient caution.

In essence, you should always check the status of your ITR after filing and verification. Also make sure if you feed in appropriate bank account details in your return so that you receive refund without undue delay and hassles. This refund is often a pleasant surprise for taxpayers and it can be seen as a chance to make extra savings that month.

- **Forgot to claim refund of previous years?**

Don't worry, Section 119(2)(b) of the Income Tax Act, 1961 comes to your rescue.

Section 119 empowers the Central Board of Taxes (CBDT) to issue instructions to lower level of authorities. In addition, section 119(2)(b) empowers CBDT to direct income tax authorities to allow any claim for exemption, deduction, **refund** and any other relief under the income tax act even after the expiry of the time limit to make such claim.

However, such claims will only be allowed by the income tax authority provided, making such a claim within the prescribed due date was genuinely out of the control of the taxpayer.

Note: There is a time limit for accepting such claims, which is as under:

The taxpayers have to file an application for making a claim of refund or carry forward of loss within next 6 years from the end of the assessment year.

Any relief or claim will be allowed only when these conditions will also be fulfilled along with those mentioned above:

- a. The income of one person is not taxable in the hands of any other person under income tax act.
- b. You will not be paid any interest on refund claims.
- c. The refund claim must be due to excess of TDS or self-assessment tax or advance tax and no other reason.

- **Can the refund be adjusted by the Department?**

Department may not pay you all the refunds due to you. If at all you have taxes due for any of the previous years and a refund due to you in another year, the income tax department may adjust the refund accordingly. However, the department cannot do so without giving the taxpayer an opportunity to explain why such an adjustment should not be done.

So, the tax department must send you an intimation under Section 245 regarding its intention of adjustment along with instructions on possible ways for you to respond to the notice. Section 245 allows the taxpayer 30 days' time limit to respond. In case of no response to the notice within the prescribed time limit, the department can go ahead with the adjustment as per notice.

In case you disagree with the tax demand raised in the notice for any reason such as incorrect computation, the omission of certain deductions or TDS etc, you may respond to it online by following the instructions provided in the notice in 30 days.

- **Refund Not issued due to initiation of Scrutiny Proceedings?**

There is a long history of Refund not being given to the assessee when scrutiny proceedings have been initiated u/s 143 of the Income Tax Act, 1961 in light of the presumption that in case of every scrutiny proceedings, the Assessing officer has the right of withholding of refund of assessee.

To clearly understand the withholding of refund, we need to travel back to the history to get an insight on the same. The power to withhold refund was earlier dealt in Section 241 of the Income Tax Act, 1961, which was as under:

“Section 241. Power to withhold refund in certain cases. –

Where refund of any amount becomes due to the assessee as a result of an order under this Act or under the provisions of sub-section (1) of section 143 after a return has been made under section 139 or in response to a notice under sub-section (1) of section 142 and the Assessing Officer is of the opinion, having regard to the fact that—

- (i) a notice has been issued, or is likely to be issued, under sub-section (2) of section 143 in respect of the said return; or*
- (ii) the order is the subject-matter of an appeal or further proceeding; or*
- (iii) any other proceeding under this Act is pending,*

that the grant of the refund is likely to adversely affect the revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine.]

The above provision got omitted by the Finance Act, 2001, w.e.f. 01/06/2001.

After the omission of the aforesaid provision, process of refund was governed by Section 143(1D) of the Act which stated that:

“Section 143 : Assessment

1(D). Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2).

[Herein, sub-section (1) and sub-section (2) takes its reference from section 143 only]”

The said provision existed prior to the amendment by the Finance Act 2017 w.e.f 01.04.2017, after which the section reads as under:—

“Section 143 : Assessment

“(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2):

Provided that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017.”

Important : The aforesaid noted amendment was simultaneous to the insertion of Section 241A by the Finance Act 2017 w.e.f. 01.04.2017, which reads as under:

“Section 241A : Withholding of Refund in Certain Cases:

For 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 sub-section (1) of section 143 and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under sub-section (2) of section 143 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.”

CRUX: As such, the return of income filed prior to assessment year commencing on or after 01/04/2017 (upto A.Y. 2016-17) will be governed by Section 143(1D) and the returns filed in the assessment year commencing on or after 01/04/2017 (A.Y. 2017-18 & onwards) will be governed by Section 241A of the Income Tax Act.

Since, now Section 241A is currently in place, let's discuss the same in detail.

Section 241A provides that where there is a refund payable on the returns furnished and processed under Section 143(1) of the Act, and the Assessing Officer is of the opinion that grant of refund is likely to adversely affect the revenue and the case is a fit case for scrutiny, he may withhold the refund up to the date on which the assessment is made, subject to reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be.

On a combined reading of Section 143, (pre and post amendment) with section 241A, it can be discerned that by virtue of the new proviso, it is now mandatory to process the return under sub-section (1) of section 143, and proceed with grant of the refund determined therein, unless, sufficient

reasons exist under Section 241A showcasing that the grant of refund is likely to adversely affect the revenue.

Further, it may also be noted that in Section 241, the reason that “grant of refund is likely to adversely affect the revenue” was, inter alia, one of the grounds mentioned for withholding of refund. However, in the newly inserted Section 241A, adverse effect on the revenue is the sole ground for such withholding. Therefore, the scope of the power has been further narrowed, making it clear that a speaking order is required to be passed culling out the reasons as to how the grant of refund is likely to affect the Revenue.

The legislature has not intended to withhold the refunds just because scrutiny assessment is pending. If such would have been the intent, Section 241A would have been worded so. On the contrary, section 241A enjoins the AO to process the determined refunds, subject to the caveat envisaged under Section 241A. The language of section 241A envisages that the aforesaid provision is not resorted to merely for the reason that the case of the assessee is selected for scrutiny assessment. Sufficient checks and balances have been built in under the said provision and same have to be given due consideration and meaning. An order under section 241A should be transparent and reflect due application of mind.

The AO is duty bound to process the refund where the same are determined. He cannot deny the refund in every case where a notice has been issued under Sub-Section (2) of Section 143. The discretion vested with the AO has to be exercised judiciously and is conditioned and channelized. Merely because a scrutiny notice has been issued should not weigh with the AO to withhold the refund. The AO has to apply his mind judiciously and such application of mind has to be found in the reasons which are to be recorded in writing. He must make an objective assessment of all the relevant circumstances that would fall within the realm of “adversely affecting the revenue”.

Conclusion:

- 1) Scrutiny notice is not sufficient ground to withheld refund.
- 2) The AO has to record the reasons in writing and CIT should give his approval after due consideration of facts that how it will adversely affect the revenue.
- 3) There should be analysis of probable Tax liability due to scrutiny proceedings
- 4) The Past history of Assessee
- 5) The financial standing of the assessee
- 6) Other factors about recovery

So, the assessee may also ask reason to withheld the refund. Even RTI may be used to gather relevant information. The department may also set some SOP for this so that the honest taxpayers or the SME units of country can get relief from Liquidity crisis and grow further to generate employment and also that the trust is built in the eyes of the people for the Income Tax Department which is right now like a pendulum, i.e. shaking left or right.