

FAST FACTS BULLETIN

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Right to Information Act and Income-tax Refunds

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If in the income-tax administration there is one area which has remained perennially incurable, it is Income-tax Refunds.

In a Press Release dated 19th April, 2007, Central Board of Direct Taxes stated: "It has been reported in some sections of the media that a large number of taxpayers are awaiting refunds from the income-tax department for up to three years. These reports are factually incorrect and based on incomplete appraisal of facts".

As per the statement made by Minister of State for Finance there have been instructions to issue refunds within four months from the date of receipt of return and dispatched within 30 days from the date of signing the refund order.

I am sure most readers of this article would doubt the correctness of above Press Release and the Statement. Many readers may not have received income-tax refunds for one or more earlier years inspite of many reminders, personal visits, and grievance-cell applications. There was no hope. It was a helpless and hopeless situation.

Right to information Act

- The Right to Information Act came into effective being from 12.10.2005. Now nearly two years are getting over.
- The Act is being used by many citizens to obtain information, which earlier was not available, from various Government Departments and other organisations like PSUs, Indian Railways, Reserve bank of India and so on.
- Information can be accessed by making an application under the RTI Act. It is very simple, least-time consuming, most inexpensive.
- Few organisations (22 in all) like CBI, RAW are basically exempted.
- Further, certain informations are exempted for all organisations covered under the RTI Act referred to as "Public Authority". Such exempt items include information on commercial confidence, trade secrets or intellectual property, information which would impede the process of investigation or apprehension or prosecution of offenders, information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual etc.

Example of application under RTI for refund
Suppose your income-tax refunds for A.Y. 2002-03 of Rs. 1,057 and for A.Y. 2004-05 of Rs. 7,230 are not received

inspite of many reminders. You make the application in Annexure A as per specimen form printed at the end of this article. You take it to one of the designated post offices, handling RTI applications. There are 88 designated post offices in Mumbai region, list available on www.bcasonline.org. For other cities, visit <http://www.indiapost.gov.in/rtimanual16a.html> to get details of designated post offices.

Submitting application under RTI

- Filing fee for RTI application to the Central Government authority is Rs. 10. Same can be paid at post-office in the form of Postal Order for Rs.10.
- To make the system operate easier, the decision was taken by the Prime Minister of India that the Department of Posts should provide its services to all the Central Government Departments as a collection point for information under the RTI Act by designating its Central Assistant Public Information Officers (CAPIOs) as CAPIOs for the entire Central Government.
- The postal department now not only receives cash of Rs. 10 on behalf of Public Authorities of all Central Government Departments or / and issues postal order for it, but also takes the responsibility of delivering the RTI application free of charge to the concerned CPIO anywhere in India. We need to appreciate the service of postal department.
- Post office normally dispatches the RTI application to the concerned Central Government Department on the same day.
- The service of Post offices for delivery is at the option of the applicant. If you desire to deliver application to the concerned department yourself personally or yourself posting it by registered post A.D. to get the acknowledgement yourself you may do so.

Public information Officer

- RTI application is to be addressed to Public Information Officer (PIO).
- Each establishment (i.e. Public Authority) covered under the RTI Act has to appoint one or more PIO, in fact one for each of the department's different offices.
- Until 09.08.2007, all Commissioners of Income-tax were PIOs. Ministry of Finance, Department of Revenue, Directorate of Income-tax vide communication dated 09.08.2007 have modified RTI mechanism in respect of PIOs / Appellate Authorities and other related RTI issues. Now your assessing officer himself is the PIO for you.

RTI applications work

- So far the success of RTI applications in Income-tax department is unbelievably 100%.
- In every case, the RTI application gets attended immediately and you get response and your pending refunds within 30 days (in some cases some more time it takes to get refunds due to non-availability of your return, you are then requested to furnish duplicate copies with Indemnity on stamp paper).
- I myself made an RTI application for refunds of my HUF. Application was made on 01.06.2006 for rectifications and then refunds due for A.Y. 1998-99, 1999-2000 and 2001-02 and for pending refunds for A.Y. 2000-01, 2002-03, 2004-05 and 2005-06. RTI application resolved all my pending matters and I received refund orders of Rs. 45,182 (tax refund of Rs. 30,950 and interest u/s. 244A of Rs. 14,232).

Framing question

- It is a remarkable and most effective tool to get your income-tax refunds if they have been due since long.
- However, you have to be careful in framing the questions you ask for seeking information. Please note that you are seeking information and not the opinion of the Public Information Officer (PIO) of the authority.
- You cannot ask "why"; e.g., why you have not issued my tax-refunds though over due? But, you can ask: please inform when my over due refunds will be issued. Believe me, on asking such a question, you

will receive the refunds due but not issued within 30 days.

- The RTI Act is so powerful that the results in most of the cases are amazingly remarkable.
- The Act provides for a time bound and defined process for citizens to access information. Severe penal provisions exist in the Act. Normally all laws provide penalty for the citizens for non-action or wrong action. Here is an Act which penalises bureaucrats for the same Rs.250 a day for any default, maximum Rs.25,000.

Assistance by BCAS Foundation

- If you need any assistance, you may visit RTI clinic being run by BCAS Foundation (division of Bombay Chartered Accountants' Society) at its office at Marine Lines on 2nd, 3rd and 4th Saturdays between 11.00 to 13.00 p.m. every month.
- You need to fix an appointment on phone: 66595601.
- Outstation readers may write to them giving details and papers connected with refunds due and assistance / guidance will be provided by post.

I end by stating: RTI is the most powerful Act, likes of which India has never witnessed before. The RTI Act has heralded citizens' rights to be recognised and thereby made participative democracy possible. If well implemented and well-used, real swaraj will dawn. Please use the tool of RTI for your benefit, the benefit of others and the benefit of all-the nation.

The Right to Information Act, 2005

ANNEXURE A (see rule 3)

Format of application for obtaining information under the Right to Information Act, 2005

To The Public Information Officer (Name of the Office with Address)	Assistance Commissioner of Income-tax, Circle 16(2)(2), Mumbai
(1) Full name of the applicant	Narayan Varma
(2) Address	56-B, Mittal Tower, 210, Nariman Point, Mumbai 400 021.
(3) Particulars of the information required	Income-tax refunds due to me as under:
(i) Subject matter of Information:	A) A.Y. 2002-03: Return of Income was furnished on 30.06.2002, refund due Rs. 1,057 with interest u/s. 244A thereon (Xerox of acknowledgement <u>enclosed</u> .)
(ii) The period to which the information relates :	B) A.Y. 2004-05 Return of Income was furnished on 31.07.2004, refund due Rs. 7,230 with interest u/s. 244A thereon (Xerox of acknowledgement <u>enclosed</u> .)
(iii) Description of the information required :	<ul style="list-style-type: none"> • Please inform what is the status of above refunds due since long and when they will be issued. • Also please inform the reasons for not responding to reminders for A above dated 04.04.2004 and for A and B above dated 06.06.2006, and 07.07.2007.
(iv) Whether the information is required by post or in person : (the actual postal charges shall be included in additional fees)	In person, on getting intimation on 9821xxxxxx. same would be collected
(v) In case by post (Ordinary, Registered or Speed)	N.A.
(4) Whether the applicant is below poverty line (if yes, attach the photocopy of the proof thereof.)	N.A.

Mumbai: 09.09.2007

Narayan Varma

Law Updates

Income tax

Circular No: 08/ 2007 (05-Dec-07)

Rates of deduction of income tax from the payment of income chargeable under the head "Salaries" during the FY 2007-08

This is the yearly circular which CBDT issues to explain provisions relating to TDS on salaries supported by examples.

Circular No: 09/ 2007 (20-Dec-07)

Explanatory circular on Fringe Benefit Tax arising on allotment or transfer of specified securities or sweat equity shares

The Central Board of Direct Taxes, has issued FAQs clarifying various issues relating to Fringe Benefit Tax (FBT) on Employee Stock Options. Bulk of FAQs pertain to foreign companies. Some of the important questions are summarized below :

shares by a foreign company to employees of its Indian subsidiary

- Where a foreign company allots shares to the employees of its Indian subsidiary company, the FBT liability will have to be paid by the Indian subsidiary company
- The Indian subsidiary company is liable to pay FBT irrespective of, whether or not, there is a charge back of cost by the foreign holding company.

Employee in India for part of grant period

- grant period is the time period between the date of grant and the date of vesting
- Where the employees are based in India only for a part of the grant period, only a proportionate amount in respect of the length of the period of stay in India of the employee will be liable to FBT.

Foreign companies subject to valuation by merchant banker in India

- If the shares are not listed in a recognised stock exchange in India, then such shares will be treated as unlisted and will have to be valued by Category 1 merchant banker registered with SEBI.
- However, if the shares are listed in any globally recognised stock exchange, the merchant banker shall use the listed price as one basis for valuation and recommend the best value

Valuing FMV for unlisted companies

- When there exists different methods for valuing FMV for unlisted companies, the Merchant Banker should determine the FMV on the basis of alternative methods and recommend the most appropriate value.
- if the shares have been valued by more than one merchant banker or by one merchant banker on more than one occasion, then the valuation which value the equity share on the specified date, which is closest to the date of the vesting of the option, should be

adopted.

- In case there are multiple date of vesting for different number of shares, the First-in-First-Out (FIFO) method shall be followed.
- It is binding upon the Assessing Officer to accept the valuation made by the Merchant Banker unless the valuation by such banker is perverse.

Deductibility of fringe benefit

- In case where the employer purchases the shares and then subsequently transfers such shares to its employees, the expenditure so incurred is allowable as deduction in computing the taxable income of the employer company.
- However, if the shares are allotted to the employees from the share capital of the company, no deduction is allowable in computing the taxable income of the company since no expenditure has been incurred by it.
- Since FBT is not an allowable deduction in computation of the income of the employer, any recovery of FBT will not be treated as income in his hands.

ESOPs issued to non-executive directors or non-employees

- Benefit arising out of ESOPs issued to non-employees will not be liable to FBT.
- However, in such cases, the taxability of such benefits in the hands of the non-employees will be determined in accordance with the existing law.

Income Tax Instruction No: 11 (18-Dec-07)

Parameters for processing of e-TDS returns

- As per the Central Action Plan for the year 2007-08 for electronic filing of TDS returns, processing is required to be done by the RCCs. After initiation of bulk processing by RCCs, the TDS Assessing Officers are to assess the mis-match report, issue show cause notices and take follow-up action. It is seen that the total demand against defaults in the large number of cases is Rs. 100/- or less.
- As per the present procedure and in accordance with the provisions of the Income Tax Act, where the default on account of short deduction or short payment is less than Rs.5/- for each deductee, the demand is rounded off to zero.
- Since in such default/demand cases of Rs. 100/- or less, the cost of compliance by issue of show cause notices along with the justification of demand or default and follow-up action may be much more than Rs.100/-, it has been decided to allow the Assessing Officers to ignore such cases and drop the demand where the demand/default is upto a level of Rs. 100/- or less. However, the DDOs in such cases may be warned to be careful in future so as to ensure that they do not become habitual in short deduction of tax.
- These instructions shall apply to all TCS/TDS cases under all direct tax enactments. These instructions will come into force immediately

NOTIFICATION NO. 289/2007 DATED 13-12-2007

Bank Term Deposit Scheme, 2006 amended

In the Bank Term Deposit Scheme, 2006, in paragraph 11, after sub-paragraph (2), the following proviso is inserted,

Provided that in the event of the death of the first holder of the deposit in a case of a joint holder type deposit, the other holder of the deposit shall be entitled to encash the term deposit before its maturity by making an application to the branch manager of the bank, supported by proof of death of the first holder of the deposit.

Labour Laws

Labour Law Press Release: (18-Dec-07)

ESI Corporation Approves New Amnesty Scheme

The Employees State Insurance (ESI) Corporation has approved a fresh amnesty scheme for withdrawal of cases against the defaulting employers and employees.

- The approved amnesty scheme will come in force from 1st January 2008 and will remain effective till the year end i.e. 31st December 2008.
- The Amnesty scheme envisages that the prosecution cases filed in the 1st Class Judicial Magistrate Courts for non-payment of contribution would be considered for withdrawal subject to payment of contribution due and statutory interest.
- The quantum of relief in damages leviable/levied to the extent of 75 per cent as specified under Regulation 31-C would be provided to the employers and the damages leviable/levied to the extent of 25 per cent only would be claimed from the employers.
- The employers will have to give an undertaking to the effect that they would be regular in compliance in future and there would not be default on their part.

Postal Saving

Post office (Monthly Income Account) Rules 1987

Post office (Monthly Income Account) (Second Amendments) Rules 2007

Rule 9, sub Rule (1) has been amended.

- Bonus equal to 5% of the amount deposited shall be paid
- This bonus is applicable to new accounts opened on or after 8th Dec., 2007
- To claim bonus, the written application form will have to be accompanied by pass book

SEBI

SEBI/IMD/CIR No.10/112153/07 (31-Dec-2007)

No entry load for Mutual fund investors

- At present irrespective of the mode of entry, investors are required to pay the entry load.
- Keeping in view the interest of the investors it has now been decided that no entry load shall be charged for direct applications received by the Asset Management Company (AMC) i.e.
 - o applications received through internet,
 - o submitted to AMC or collection centre/ Investor Service Centre that are not routed through any distributor/agent/broker.
- This circular shall be applicable for investments in existing schemes with effect from January 4, 2008 and in new schemes launched on and after the said date.
- It shall also be applicable to additional purchases done directly by the investor under the same folio and switch-in to a scheme from other schemes if such a transaction is done directly by the investor. ■

Delhi ITAT Ruling : Tax paid by employer

There is good news for salaried taxpayers, especially foreign nationals working in India. In case employer picks up employees tax liability, this perquisite of tax-free salary will not be taxed again.

A special bench of the Income Tax Appellate Tribunal (ITAT), held that when tax on salary is paid by employer, this perquisite is exempt from tax under Section 10 (10C) of the Income-Tax Act, which means that it cannot be taxed again. Therefore, if an employer picks up the income tax tab of the employee, this benefit of tax-free employment will not be taxed again.

This ruling was given in the case of RBF Rig Corp LLC, USA.

Issues when tax is paid by employer

- When tax is paid by the employer, whether it is to be considered as a perquisite or salary is not expressly stated under the Act. Tax is statutory obligation of the employee and when met by the employer it can be treated as a perquisite. The other view is that the tax paid by the employer is merely allocation of salary towards taxes.
- If the tax paid by the employer is considered to be a perquisite, the next issue to be addressed is whether it is a "monetary payment" or a "non-monetary perquisite". Again, "monetary payment" and "non-

monetary perquisites" has not been defined under the Act and different views are expressed as to their classification. This distinction is important as it has a direct impact on the taxability of the employee, in terms of single or multiple grossing up and hence, the overall cost for the employer.

Delhi Tribunal's judgement

The Tribunal has held that the tax paid by the employer on behalf of the employee would constitute a "perquisite". such tax payment to the government would not constitute monetary payment to the employee and therefore not subject to multiple grossing up.

- If the employer agrees to pay Rs 100 net of tax salary to the employee in India and the tax rate is 34%.
- When such tax payment by the employer is considered to be a "non-monetary perquisite" then only Rs 34 shall be added to the taxable income of the employee.
- If such tax payment is considered a "monetary payment" then Rs 34 will be subject to multiple grossing up and Rs 52 will be added in the taxable income of the employee, so that after paying a tax of 34% on Rs 152, the employee receives Rs 100 net of tax salary. ■

Laptops are replacing the desktops at most of the offices. Due to increase of travel and loads of work.

Laptops were designed with portability in mind. Many of the design features create problems when it comes to ergonomics. Long periods of working and inappropriate laptop use can increase the chance of muscle and joint pain, overuse injuries of the upper limbs and eyestrain. The problem is that the monitor and keyboard of a laptop are very close together.

The risks can be reduced or eliminated with proper work space design, improved posture and good working habits.

Posture-related injuries

Back and neck pain, headaches, and shoulder and arm pain are common laptop-related injuries. Such muscle and joint problems can be caused or made worse by poor workstation design, bad posture and sitting for long hours.

Although sitting requires less muscular effort, it still causes fatigue and requires parts of the body to be held steady for long periods of time. This reduces circulation to the muscles, bones, tendons and ligaments and can result in stiffness and pain. If a workstation is not set up properly, these steady positions can put even greater stress on muscles and joints.

Prevention tips muscle and joint injuries

Suggestions to reduce the risk of muscle and joint problems include:

- Position your keyboard at a height that allows your elbows to rest comfortably at your side. Forearms should be roughly parallel with the floor and level with your keyboard.
- Adjust your chair so that your feet rest flat on the floor.
- Use a footstool (if your feet do not rest on the floor when the chair is adjusted for good arm position).
- Switch to an ergonomic chair, which helps your spine to naturally hold its curve while sitting.
- Use an ergonomic keyboard to offer your hands and wrists a more natural holding position.
- Take frequent short breaks and go for a walk or perform stretching exercises at your desk. Stand often.
- Use external devices. Attach an external keyboard and pointing device to your laptop. Position them at a height that allows your upper arms to hang loosely from the shoulder and your forearms to extend horizontally towards the keyboard.
- Raise the laptop. Place the laptop on a stand, book or other surface so that you can see the screen without having to bend or rotate your neck.

Ideally screen should be 51 cm away and 20 cm below eye level.

Overuse injuries of the upper limbs

Muscles and tendons can become painful with repetitive movements and awkward postures. This is known as

'overuse injury' and these typically occur in the elbow, wrist or hand of computer users. Symptoms of overuse injuries in the upper limbs include pain, swelling, stiffness of the joints, weakness and numbness.

Prevention tips overuse injuries

Suggestions to reduce the risk of overuse injuries include:

- Keep your mouse at the same height as your correctly positioned keyboard.
- Position the mouse as close as possible to the side of the keyboard.
- Use your whole arm, not just your wrist, when using the mouse.
- Type lightly and gently.
- Mix your tasks to avoid long, uninterrupted stretches of typing.
- Remove the hands from the keyboard when not actively typing, to allow the arms to relax.
- Make sure the laptop is stable and will not wobble or slide as you work, rest your eyes frequently and blink more to prevent them feeling dry, it adds.

Eyestrain

Focusing your eyes at the same distance point for extended periods of time would cause fatigue. The human eye structurally prefers to look at objects further than six meters away, so any work performed close-up puts extra demands on the eye muscles.

The illuminated computer screen can also contribute to eye fatigue, blurred vision, temporary inability to focus on faraway objects and headaches.

Prevention tips eyestrain

- Make sure your primary light source (such as a window) is not shining into your face or directly onto the monitor.
- Tilt the monitor slightly to eliminate reflections or glare.
- Maintain a gap of nearly 51 cm between screen & eyes.
- Position the screen at or 20 cm below eye level.
- Reduce the contrast and brightness of your screen
- Frequently look away from the screen and focus on faraway objects.
- Have regular eye examinations if any symptoms appear.

Precautions while carrying laptop during travel

Frequent travelers carrying laptop can put strain on backs, hands and shoulders. To minimize these precautionary measures are :

- Carry only the essential laptop accessories.
- Use a sturdy bag, backpack, or rolling luggage.
- Pack an external mouse.

So you see, there can be many disorders by use of technology. But, still the technology is to be used with the changes in the business needs, space shortage etc... Therefore, as they say 'Precaution is better than cure'; one should understand the risk, take it seriously and to try to minimize the injuries. ■

Frequently Asked Questions (FAQ) in Service Tax issued by DGST

DGST has issued its Third Edition of Frequently Asked Questions (FAQ) during December 2007. Some of the important clarification given in this FAQ are summarised below:

Registration

- It is been clarified that having PAN issued by the Income tax department is essential for obtaining Service tax registration number.
- However, if PAN is not allotted, temporary service tax registration number will be issued.

Payment

- It is clarified that payment of service tax by a service tax assessee is necessarily to be deposited in designated bank / branch only.
- Interest on delayed payment of service tax or any amount pertaining thereto is mandatory and it cannot be waived in ordinary jurisdiction.
- Payment vide e-payment system can be made any time during 24 hours of a day. However payment made upto 8.00 PM will be accounted on the same day. However payment effected after 8.00 PM will be included in next working day's scroll by the Focal point Branch.
 - It is further clarified that on successful payment the internet banking users gets a cyber receipt for the tax payment, which can be saved or print out taken for records.
 - Further the concerned Focal point Bank on the next working day will send the challan copies duly receipted and stamped to the tax payer by courier at the mailing address provided by the taxpayer.

Returns

- DGST in the aforesaid FAQ has stated that filing of NIL return is compulsory, within the prescribed time limit failing which penal action is attracted.
- However this clarification is in contradiction to the master circular no.97 dated 23rd Aug 2007 issued by CBEC, extract of which is reproduced below

Service tax return

The service tax return is required to be filed under Section 70 of the Act read with rule 7 of the Rules, by 'any person liable to pay the service tax'. This return is required to be filed on a half yearly basis, in Form

ST-3. For the periods from April to September and

October to March, it must be filed by the 25th October and the 25th April respectively. Further, 'Input Service Distributor' is also required to file this return. Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return.

Other Miscellaneous provisions

- It is also clarified that it is mandatory to indicate the amount of Service Tax charged in the Bill/Invoice/Challans raised on the clients.
- It is further clarified that All records and documents concerning any taxable service, Cenvat transactions, etc must be preserved for a minimum period of 5 preceding financial years.

Export Incentives

- It is clarified that, If export proceeds are received in Indian currency, no export benefit shall be available to the service tax assessee.
- The department has also mentioned the benefits available to the service tax assessee for export of services, these benefits are reproduced below,
 - Taxable services may be exported without payment of service tax, provided the conditions specified in Export of Service Rules, 2005 are fulfilled.
 - Where service tax has already been paid on export of services to countries (other than Nepal and Bhutan), rebate/refund of such service tax, can be availed under notification no. 11/2005-ST dated 19.4.2005;
 - Where service tax has already been paid on the inputs and input services used in export of services to countries (other than Nepal and Bhutan), rebate/refund of such excise duty on inputs and service tax paid on input services can be availed under notification no. 12/2005-ST dated 19.4.2005;
 - Where taxable services are exported without payment of tax, but CENVAT Credit was availed, the refund of accumulated CENVAT Credit (if cannot be fully used for payment of service tax), may be claimed as refund under rule 5 of the CENVAT Credit Rules, 2004 read with notification no. 11/2002-CE (N.T.) dated the 1st March, 2002, as amended. ■

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