



# CBDT ISSUES INSTRUCTIONS FOR WITHHOLDING OF INCOME TAX REFUNDS- WILL THIS MAKE THE PROCESS OF REFUNDS EASIER?

## Introduction

Under the Income Tax Act, 1961 (ITA), Taxpayer may become eligible for refund of taxes in various scenarios such as the TDS/ TCS credit being higher than the tax liability or the advance tax payments exceeding the final tax liability.

However, the grant of refunds under the Income Tax Act, is not an automatic process and there exist provisions under the ITA where, even though the tax department has confirmed a refund being due to the Taxpayer for a particular assessment year, such refund may be adjusted

against the confirmed/ proposed tax payable by the Taxpayer for other assessment years.

## Statutory provisions providing for withholding of refunds.

Prior to the amendment in Finance Act, 2023 (FA 2023) there were two sections which dealt with the withholding of refunds viz, S.241A and S.245 of the ITA. The memorandum to FA 2023 provided that there is an overlap between the two provisions and hence it was proposed to integrate the two sections by removing S.241A and combining the provisions in S.245 of ITA.

A brief comparison of the pre and post amendment position is provided below:

Sl.No	Pre-amendment	Post-amendment
1.	S.241A of ITA provided that where a refund becomes due to the Taxpayer under sub-section (1) of section 143 and notice for assessment is issued to him under sub-section (2) of section 143, the Assessing Officer (AO) may withhold such refund till the date of such assessment being made, if he is of the opinion that the grant of refund is likely to adversely affect the interests of the Tax Department.	1. Sub-section (1) of S. 245 provides that where under any of the provisions of this Act, a refund is due to any Taxpayer, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against any sum remaining payable under this Act by the Taxpayer, after giving an intimation in writing to such person of the action proposed.

2.	S. 245 of ITA provided that where refund is found to be due to any Taxpayer under any provisions of the ITA, the AO or other income-tax authorities mentioned in the section, may, in lieu of tax payment, set off part or whole of the refund against any sum remaining payable by the Taxpayer, after giving him an intimation in writing regarding the proposed action.	2. Sub-section (2) of S.245 provides that where a part of the refund has been set off under sub-section (1) or where no amount is set off, and refund becomes due to the Taxpayer, the AO, having regard to the fact that proceedings of assessment or reassessment are pending in such case and grant of refund is likely to adversely affect the Tax Department, and for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, may withhold the refund till the date on which such assessment or reassessment is made
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### Central Board of Direct Taxes (CBDT) Instruction No.02/2023 dated 10 November 2023

The CBDT has recently issued an Instruction which lays down the timelines, monetary threshold and the procedure to be followed while withholding refunds under sub-section (2) of S.245 of the ITA. The salient points of which are reproduced below:

1. The monetary threshold for applicability of sub-section (2) of S.245 shall be INR 1,000,000, i.e. where the value of refund is INR 10 lakhs or more.
2. The Faceless Assessment Officer (FAO) shall intimate the Jurisdictional Assessing Officer (JAO) about the tax demand likely to be raised in the ongoing assessment(s).
3. The JAO shall carefully analyse the case and record the reasons in writing and communicate his decision regarding withholding/ releasing refunds to CPC.
4. The JAO shall have to seek approval of the Principal CIT prior to withholding refunds.
5. The JAO shall have to consider the financial condition of the taxpayer, past demands against the taxpayer and pending appeals while arriving at his decision and reasons for withholding the refunds cannot be cursory, i.e., the decision must be detailed and based on the factual considerations.
6. The time limit provided shall be 20 days for the Faceless assessment unit and 30 days to the JAO to complete the entire exercise.

#### Comments

The issue of Instruction by the CBDT is a welcome step since the monetary threshold of INR 10 lakhs has been specified which suggests that taxpayers with small refunds may not be covered within the ambit of sub-section (2). Further the Instruction also lays emphasis on the fact that the use of sub-section (2) of S.245 should be done in genuine cases, where the AO is has applied his mind and provided reasons in writing, which are not 'cursory' in nature and grant of refund in such cases would be 'prejudicial to the interests of revenue'.

However, it would be interesting to see whether the Assessing Officers would follow the Instruction in spirit or whether compliance of the Instruction

would be reduced to a procedural matter, since in the past there have been cases where the Tax Department has used the powers of withholding refund under S.241A in a very lenient manner by sending auto-generated communications for withholding of refund. In this scenario, it would be useful to refer the judgement of the Bombay High Court in the case of Vodafone Idea Ltd, wherein the Bombay High Court had held that an order under S.241A cannot be passed in a mechanized manner and has to be passed after application of mind post considering the issues involved in the case. The relevant extracts are reproduced below:

*“When Section 241A confers the Assessing Officer with wide discretionary powers and at the same time, puts conditions for exercise of such powers, such exercise under no circumstances can be taken over by computerized system. The very essence of passing of the order under Section 241A is application of mind by the Assessing Officer to the issues which are germane for withholding the refund on the basis of statutory prescription contained in the said Section. We must, therefore, deprecate the practice of the department in sending such auto-generated response to the assessee for withholding the refunds.”*

Basis the above observations and the Guidelines issued under the CBDT Instruction, it is hoped that the powers under sub-section (2) of S.245, would be used by the Assessing Officers sparingly, after considering the facts carefully and after recording valid reasons for withholding of refunds and not in a mechanical manner, since if the refund is withheld only on the basis of a likely demand to be raised in an ongoing assessment order, it may result in undue hardships to the Taxpayer.

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