L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

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Model GST Law – Refunds

Refunds

Refund claim

- Refund claim may be filed in respect of any tax, interest paid on such tax or any other amount with the proper officer of IGST/CGST/SGST.

- Refund may also be claimed of unutilised input tax credit at the end of any tax period, in cases of exports or accumulated on account of rate of tax on inputs being higher than the rate of tax on output. However, refund in such cases will not be allowed if the goods exported out of India are subject to export duty.

- Refund claim may also be in respect of refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India, or refund of tax on the supply of goods regarded as deemed exports.

- The refund application shall be accompanied by –

    1. Documentary evidence to establish that the refund is due to the applicant.

2. Documentary / other evidence to establish that the amount was collected from, or paid by, the applicant and the incidence of such tax and interest had not been passed on by him to any other person. Where the refund claimed is below Rs. 5 lakhs, it is sufficient to only file a declaration, based on the documentary or other evidences with the applicant, certifying that the incidence of such tax and interest had not been passed on by him to any other person.

Time limit for claim

- Refund claim shall be filed before the expiry of two years from the ‘relevant date’.
- This limitation of 2 years shall not apply where the tax, interest or amount has been paid ‘under protest’.
- ‘Relevant date’ in case of goods means –

1. In respect of exports by sea or air, the date on which the ship/aircraft leaves India; by land, the date on which the goods pass the frontier; and by post, the date of despatch by the post office to a place outside India.

2. In respect of deemed exports, the date on which the return relating to such deemed exports is filed.

3. In respect of returns for being remade, refined, reconditioned, or subjected to any other similar process in any place of business, the date of entry into the place of business for the purposes aforesaid.

- ‘Relevant date’ in case of services exported out of India means the date of receipt of payment in convertible foreign exchange, where the supply of service had been completed prior to the receipt of such payment; or issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.

- In case of consequential refunds arising from judgment, decree, order or direction of appellate body or Court, the relevant date shall be the date of communication of such judgment, etc.

- In case of refund of unutilised ITC as mentioned in (b) above, the relevant date shall be the end of the financial year in which the claim for refund arises.

- Where tax is paid provisionally, the relevant date shall be the date of adjustment of tax after the final assessment.

Processing of refund claim

- Where the proper officer is satisfied that the amount claimed is refundable, he shall order accordingly and credit to the Consumer Welfare Fund except where the refund claim relates to exports, refund of input tax credit as mentioned in (b) above, or the applicant had not passed on the incidence of such tax and interest to any other person. However, no refund shall be to an applicant if the amount is less than rupees one thousand.

- The order above shall be issued within 90 days from date of receipt of the complete application.

- Where refunds have been claimed on account of export of goods and/or services made by such category of registered taxable persons as may be notified, 80% of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, shall be refunded on a provisional basis subject to safeguards as may be prescribed. The remaining 20% may be refunded after due verification of documents furnished by the applicant.

- However, where any refund is due under the said sub-section to a registered taxable person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may either withhold payment until the return is filed or tax is paid; or deduct such tax, interest or penalty from the refund due. Specified date for this purpose means the last date for filing an appeal where no appeal has been filed and 30 days after such last date in other cases.

Interest on delayed refunds

- If the refund is not granted within three months from the date of receipt of application, interest at notified rate shall be payable from the date immediately after the expiry of the due date for sanction of refund till the date of refund of such tax.

NEW DELHI
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9800

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg, (Near Century Bazar)
Prabhadevi, Mumbai - 400025.
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West,
Bangalore-560 055.
Ph: +91-80-4933 1800
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner,
Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune – 411 001
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA
2ND Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-492 1700
E-mail : lschd@lakshmisri.com

GURGAON
OS2 & OS3, 5th Floor, Corporate Office Tower, AMBIENCE Island, Sector 25-A,
Gurgaon - 122001
Phone : +91-124-477 1300
E-mail :lsgurgaon@lakshmisri.com

International Offices

LONDON
Lakshmikumaran & Sridharan (UK) LLP
Octagon Point,
St. Paul's,
London EC2V 6AA
Phone : +44 20 3823 2165
E-mail : lslondon@lakshmisri.com

GENEVA
Lakshmikumaran & Sridharan SARL
35-37, Giuseppe Motta
1202 Geneva
Phone : +41-22-919-04-30
Fax: +41-22-919-04-31
E-mail : lsgeneva@lakshmisri.com

www.lakshmisri.com www.lakshmisri.cn
www.lakshmisri.ch www.addb.lakshmisri.com