

GST Alert 11/2022-23

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Refund of GST to Unregistered Persons

In the erstwhile law, there was no restriction as to the time limit for cancellation of a service contract. If not satisfied, one could ask the service provider to cancel the contract and refund the money so paid along with Service tax. Service provider could then adjust the Service tax so refunded from its future tax liability or claim refund from the government within one year from the date of such cancellation. However, under GST a supplier can issue a credit note only upto 30th November of next year, hence any cancellation for a service provided in a fiscal year can be done maximum by 30th November for the person to be able to get the GST back. If the cancellation happens post 30th November, the supplier can issue only a Financial Credit Note without GST which in other words means that GST becomes a cost for the customer.

Considering above issue, Government has made some changes whereby an unregistered person who has borne the tax as discussed above can claim refund thereof, said changes are articulated via circular no 188/20/2022 dated 27.12.2022, gist of the same is discussed below

1. Who is eligible to file the refund

Two kinds of transaction are covered by this circular, in cases where the contract/agreement for supply of services of:

A. Construction of flat/building is cancelled, or

Unregistered buyer, who had entered into an agreement with a builder for supply of services of construction of flats/office and had paid the amount towards the same along with GST to the builder. Due to non-completion, delay or any other reasons he wants to cancel his booking and seeks refund of the entire amount paid as well as GST.

B. Long-term insurance policy is terminated

Premium for the entire period of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons.



2. Process of filing refund by the unregistered person

As the time-limit for issuing credit note has lapsed, the supplier (builder or Insurance Company) cannot refund the GST to the customer. This circular prescribes following mechanism whereby the unregistered customer can file a refund application

A. Step 1 - Registration

Unregistered Buyer shall obtain a temporary registration on the GST portal using his PAN. While doing so, the unregistered person shall select the same state/UT where his supplier, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

B. Step 2 – Filing of Refund Application

Application for refund shall be filed in **FORM GST RFD-01** on the GST portal under the category '**Refund for unregistered person**'.

Application must be filed along with following Statement and documents

- a. Invoice raised by the supplier, GST of which is sought as refund
- b. Details in Statement 8 as notified by rule 89(2)(ka) of the CGST Rules
- c. Proof of making payment to the supplier – it can be receipt issued by the supplier, abstract of the Bank Statement
- d. Copy of agreement / contract with the supplier
- e. Proof of cancellation of contract in terms of a letter issued by the supplier or a Termination agreement.



- f. Proof of payment received from the supplier; it should be the basic amount only without the GST. It can be refund voucher issued by the supplier and abstract of the Bank Statement.
- g. Certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices.
- h. Declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered indifferent States, the applicant shall obtain temporary registration in the each of the concerned States where the said supplier are registered

3. Where time limit for issuance of GST credit note by Supplier has not expired

Where the time period for issuance of credit note under GST law (30th November of next financial year) has not expired at the time of cancellation/termination of agreement for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. **Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation of agreement for supply of services, the time period for issuance of credit note under GST law has already expired.**



4. Time limit for filing refund by unregistered person

Under GST law refund for a person other than the supplier must be filed within 2 years of the receipt of service. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term agreement for the service, with the provision of making payment in advance or in instalments, for example-construction of flats or long-term insurance policies, if the contract is cancelled before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been rendered. **Therefore, in such type of cases, date of issuance of letter of cancellation of the agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant, accordingly the unregistered customer will have to file refund of GST within 2 years of the cancellation of the agreement.**

5. Refund Processing

Officer concerned shall process the refund as other regular refunds. He shall scrutinise the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction or rejection order in FORM GST RFD-06 accordingly and upload a detailed speaking order along with it on the GST portal.

In cases where the amount paid back by the supplier to the unregistered person on cancellation of agreement for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

GST amount involved in the Refund Application must be above Rs 1000 else the same will be rejected.

6. Unanswered Questions:

Said circular specifically provides that it is applicable in case of refund to unregistered recipients of only 2 types of supplies, Construction of flats/building and long-term insurance.



Can the department take a stand that this circular cannot be made applicable to supply of all services. In my view the legal concept propounded by this circular transcends to all kinds of transaction where the supply, the way it was contracted, has not been received by the recipient. Hence implication of this circular cannot be restricted to just 2 kinds of supplies.

Secondly the circular only talks about refund to an unregistered person, what if a registered company, which is into the business of selling toys, booked an office unit and later on cancelled the booking. Would it be eligible to file refund and would this circular come to his rescue. In my view, even though this circular talks about refunds to unregistered person, the legal concept shall transcend to registered person as well and they can also file the refund, albeit not under the 'Unregistered' category. They can file the refund under 'Others' category.

Hope the Council takes notice of these unanswered questions and clarifies them and does not let them fester into litigation.

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