



CBDT issues FAQs with respect to the Direct Tax Dispute Resolution Scheme, 2016

Background

The Finance Act, 2016 introduced the Direct Tax Dispute Resolution Scheme, 2016 (the Scheme) which provides an opportunity to taxpayers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The Central Board of Direct Taxes (CBDT) notified¹ the Direct Tax Dispute Resolution Scheme Rules, 2016 (the Rules) with effect from 1 June 2016. Various stakeholders raised queries to obtain clarity on the provisions of the Scheme.

CBDT Circular

Recently, the CBDT has issued a circular² clarifying certain provisions of the Scheme in the form of 14 Frequently Asked Questions (FAQs). The detailed FAQs and its answers are summarised as follows:

Question No.	Question	Answer
1	In a case where an appeal was pending before Commissioner of Income-tax (Appeals) [CIT(A)] as on 29 February 2016. However, before making a declaration under the Scheme, the appeal is disposed of by CIT(A). Is the taxpayer eligible to avail the Scheme?	The declaration under the Scheme cannot be filed.
2	In a case where the taxpayer has filed a declaration under the Scheme or has intimated the CIT(A) his intention to file a declaration under the Scheme, whether the CIT(A) will dispose-of the appeal?	<p>The CIT(A) have been instructed vide letter³ that appeals where the appellants have expressed their intention to avail the Scheme should be kept pending.</p> <p>Further, vide letter⁴ the designated authority has been instructed to obtain an endorsement from CIT(A) that the appeal for which the declaration has been filed was pending on 29 February 2016 and has not yet been disposed. Therefore, in a case where the declaration has been made under the Scheme or an intention to avail the Scheme has been made by the appellant, the CIT(A) shall not</p>

¹ CBDT Notification No.35/2016, dated 26 May 2016

² CBDT Circular No. 33/2016, dated 12 September 2016 – Taxmann.com

³ F.No.279/Misc./M-30/2016, dated 30 March 2016

⁴ F.No.279/Misc./M-74/2016-ITJ, dated 19 July 2016

		dispose the pending appeal.
3	Where the appeal against quantum as well as penalty under Section 271(1)(c) of the Income-tax Act, 1961 (the Act) is pending before CIT(A) and the taxpayer files a declaration in respect of the quantum appeal under the Scheme, what would be the fate of the penalty appeal?	Whether disputed tax in a quantum appeal ⁵ exceeds INR10 lakh or not, where a valid declaration under the Scheme is made in respect of quantum appeal, the appeal against the penalty levied under Section 271(1)(c) of the Act relating to the quantum appeal pending before the CIT(A) shall be deemed to be withdrawn and the penalty or the balance amount of penalty, as the case may be, shall be deemed to be waived.
4	The provisions of Section 203(2) of the Finance Act, 2016 provide that consequent to the declaration in respect of the tax arrears, the appeal pending before CIT(A) shall be deemed to be withdrawn. From what point of time does the provision become operative?	The appeal pending with CIT(A) shall be deemed to be withdrawn from the date on which the certificate under Section 204(1) of the Finance Act, 2016 is issued by the designated authority.
5	The addition made in assessment has the effect of reducing the loss but the penalty has been initiated under Section 271(1)(c) of the Act. Is the taxpayer eligible to avail of the Scheme?	The Scheme is applicable to cases where there is disputed tax. Since in the case of a reduction of loss, there is no disputed tax, the taxpayer shall not be eligible to avail the Scheme. However, if an appeal is pending before CIT(A) in respect of the penalty order framed as a result of variation in the quantum loss, the declarant may file a declaration in respect of such a penalty order.
6	Where the time period specified under Section 249 of the Act for the filing of appeal expired on 29 February 2016. The taxpayer filed an appeal in this case on 5 April 2016 with a request to condone the delay in filing the appeal. The CIT(A) condoned the delay in filing of the appeal. Is the Scheme available to the taxpayer in such cases?	In condonation cases, a declarant shall be eligible for the Scheme, if: <ul style="list-style-type: none"> i) the time limit for filing of appeal under Section 249 of the Act has got barred by limitation on or before 29 February 2016; ii) the appeal and condonation application have been filed with CIT(A) before 1 June 2016; and iii) the delay in filing of such appeal is condoned by the CIT(A).
7	In case the CIT(A) has given a notice of enhancement, whether the taxpayer is eligible for availing the Scheme?	In cases where the notice of enhancement has been received by the declarant before the date of commencement of the Scheme, the taxpayer shall not be eligible for the Scheme.
8	A survey was conducted during Financial Year 2013-14. Incriminating documents relating to Assessment Year (AY) 2011-12 were found and assessment under Section 147 of the Act for the said year was made based on these documents and other enquiries conducted. Is the taxpayer's case for AY 2011-12 which is pending with CIT(A) eligible for the Scheme?	As per Section 208 of the Finance Act, 2016, the Scheme shall not be available for assessment or reassessment on which the survey conducted under Section 133A of the Act has a bearing. Hence, in the present case, AY 2011-12 is not eligible for the Scheme.

⁵ As per the Scheme, in a case where disputed tax in the quantum appeal is more than INR 10 lakh, the declarant has to pay the disputed tax, interest and 25 per cent of minimum penalty leviable. Further, in a case where the disputed tax in quantum appeal does not exceed INR 10 lakh, the declarant is required to pay only the disputed tax & interest, and there is no requirement for payment of any amount in respect of penalty leviable. Section 205(b) of the Finance Act, 2016 provides immunity from imposition or waiver of penalty under the Income-tax Act or the Wealth-tax Act in respect of tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty referred to in Section 202(l) of the Finance Act, 2016.

9	In cases where an appeal against a penalty order under Section 271(1)(c) is pending before CIT(A) and appeal against quantum addition is pending with higher appellate authority. As per the Scheme, the amount payable is 25 per cent of the minimum penalty leviable and the tax and interest payable on the total income is finally determined. What should be construed as the 'total income finally determined' for computing the quantum of tax, interest, and penalty payable under the Scheme? Further, what would be the effect of any variation in the quantum addition as a result of the appellate order(s) passed subsequent to the filing of the declaration?	In the case of an appeal relating to a penalty under Section 271(1)(c), the amount payable under the Scheme is 25 per cent of the penalty amount and also the tax and interest payable on the total income finally determined. For this purpose, the total income finally determined shall be the total income as determined after giving effect to the last appellate order passed on or before the date of filing a declaration under the Scheme. Any variation to the total income as a result of any appellate order passed subsequent to the date of the declaration shall be ignored for the purposes of computing the amount of penalty payable under the Scheme.
10	Where certain income has been charged to tax in the hands of two different persons or where it has been charged to tax in the case of the same person in two different assessment years, one on a substantive basis and the other on the protective basis, will the declarant or the other person get an advantage in respect of additions made both substantively and protectively?	The taxpayers are advised to make declarations in cases or for AYs where the additions are made on a substantive basis. The protective demand is not subjected to recovery unless it is finally upheld. Once the declaration in a substantive case or year is accepted, the tax arrears in the protective case/year would no longer be valid and will be rectified by suitable orders in the normal course.
11	By filing a declaration under the Scheme for one assessment year, does the taxpayer forego his/her right to appeal on the same issue in another assessment year?	No. The order under the Scheme does not decide any judicial issue. It only determines the sum payable under the Scheme with reference to tax arrears or specified tax, as the case may be. It only provides a dispute resolution mechanism in respect of cases for which the declaration has been made.
12	If the declarant has not paid the tax payable under the Scheme within 30 days of the order for any reason including the non-realisation of the cheque presented to the bank, will the declarant be eligible for the relief under the Scheme?	No. The tax payable under the Scheme should be paid to the credit of the government on or before the due date as specified in the Scheme. The taxpayers are advised to pay the tax well in time so as to avail the relief under the Scheme.
13	There is no time limit specified for intimating the payments made by the declarant in accordance with the certificate issued in Form-3. Further, there is also no time limit specified for issuance of an order under Section 204(2) of the Finance Act, 2016 by the designated authority.	The declarant shall intimate the fact of payment along with the proof of the same to the designated authority within one month from the date on which the time limit for making a payment under the Scheme expires. The designated authority shall issue the order under Section 204(2) of the Finance Act, 2016 within one month from the end of the month in which the intimation regarding payment is received in Form-4 from the declarant.
14	Whether refund will be granted in cases where the taxpayer has already paid the penalty amount in full or in part while the appeal is still pending at CIT(A) stage and the taxpayer opts for	As per Section 202(l)(b) of the Scheme, in the case of a pending appeal related to the penalty, 25 per cent of the minimum penalty leviable along with tax and interest on the total income finally determined is required to be paid. Therefore, if a taxpayer who

	this Scheme?	has already paid an amount over and above the amounts referred to in Section 202(l)(b) opts for the Scheme, he shall be eligible for a refund of the excess payment already made. However, the declarant shall not be eligible for claim of interest on such a refund under Section 244A of the Act.
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Our comments

The CBDT circular clarifying certain concerns of the stakeholders is a welcome move. With the clarifications on the Scheme, the taxpayer stands to benefit by the timely disposal of their litigation, while the tax department stands to reduce its administrative costs in the disposing of appeals.

Clarifying a query, whether by filing a declaration under the Scheme for one assessment year, the taxpayer forgoes his/her right of appeal on the same issue in another assessment year, CBDT replied in the negative. The CBDT clarified that the taxpayers are advised to make declarations in cases or for AYs where the additions are made on a substantive basis. Further, it has been clarified that the Scheme shall not be available for assessment or reassessment on which the survey is conducted under Section 133A of the Act.

Where a notice of enhancement has been received before the date of commencement of the Scheme, the taxpayer shall not be eligible for the Scheme. CBDT clarifies that assessment orders resulting in reducing loss are not eligible under the Scheme, however, the Scheme may be availed on the penalty under Section 271(1)(c) levied on the loss reduction.

Where the taxpayer has already paid the penalty amount over and above the threshold prescribed in the Scheme, and he/she opts for the Scheme, CBDT has clarified that such a taxpayer shall be eligible for the refund of the excess payment already made, however he/she shall not be eligible for interest under Section 244A on the refund.

These FAQs will provide much needed clarity to taxpayers.

www.kpmg.com/in

Ahmedabad

Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida

6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

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