

# ***CBDT extends deadline for Direct Tax Dispute Resolution Scheme, 2016 and issues further clarifications***

January 05, 2017

## ***In brief***

The Dispute Resolution Scheme, 2016 (Scheme) was introduced *vide* Finance Act, 2016, as a measure to give taxpayers an option to settle litigation pending at the first appellate level or any litigation, arbitration etc. pertaining to retrospective amendments made to the Income-tax Act, 1961 (the Act).

The Central Board of Direct Taxes (CBDT) *vide* circular no. 33/2016 dated 12 September 2016, had issued certain clarifications in relation to the Scheme, in the form of frequently asked questions<sup>1</sup>. Recently the CBDT, *vide* circular no. 42/2016 dated 23 December 2016 issued further clarifications regarding the Scheme and *vide* notification dated 29 December 2016<sup>2</sup>, also extended the deadline of enrolling into the Scheme to 31 January 2017.

The clarifications issued by the CBDT have been elucidated in the ensuing table.

## ***In detail***

### ***Clarifications issued on 23 December 2016***

S. No.	Question	Answer
1	<p><b>Eligibility, where tax officer (TO) has been making similar additions, prior to retrospective amendment to the Act</b></p> <p>Is the taxpayer eligible in case of additions made by the TO under section 9 of the Act, which were later validated by an amendment made retrospectively?</p>	<p>Such a case shall fall under the definition of 'specified tax' as defined under section 201(1)(g) of the Finance Act, 2016, as in this scenario, an addition made by the TO before such retrospective amendment is validated by such amendment.</p> <p>The taxpayer will be eligible to avail the Scheme provided that dispute in respect of such tax/addition that is pending on 29 February, 2016.</p>

<sup>1</sup> Please refer to our [Tax Insight dated 19 September 2016](#) for further details in this regard.

<sup>2</sup> Notification No. 124/2016/F. No. 142/11/2016-TPL

S. No.	Question	Answer
2	<b>Withdrawal of pending writs in relation to constitutional validity of retrospective amendments to the Act</b>  Can taxpayers still contest the constitutional validity of retrospective amendments to the Act, where they avail the benefits of the Scheme?	Taxpayers availing the benefits of the Scheme cannot contest the constitutional validity of the retrospective amendments to the Act.  Therefore, such taxpayers are required to withdraw such writ petitions with the leave of the Court, wherever required, and furnish proof of such withdrawal along with the declaration filed under the Scheme
3	<b>Withdrawal of appeals by tax authorities</b>  Are tax authorities required to withdraw pending appeals, where the taxpayer wishes to settle the issue under the Scheme?	The provisions of section 203 of the Act, require the <i>declarant</i> withdraw all pending litigation. The Scheme does not envisage withdrawal of appeals by tax authorities.
4	<b>Payment in instalments</b>  Can the taxpayer make payments under the Scheme in instalments, similar to Income Declaration Scheme, 2016?	Tax payments under the Scheme cannot be made in instalments; due dates are prescribed under section 204 of the Act.
5	<b>Pending reference before High Level Committee constituted for considering retrospective amendments in relation to Indirect Transfer</b>  Is a taxpayer eligible for the Scheme where, as on 29 February 2016, the matter is pending in the form of reference made by the TO to the High Level Committee constituted on 28 August 2014 for considering proposals for assessment of income arising or accruing before 01 April 2012 on account of retrospective amendments related to indirect transfer?	In such a scenario, since, as on 29 February 2016, only reference is pending before the High Level Committee and the tax is determined by the tax officer after 29 February 2016, dispute cannot be said to be pending as on 29 February 2016 as per the provisions of the Scheme. Therefore, such taxpayer is not eligible to avail the Scheme.
6	<b>Penalty orders under sections 271C or 271CA of the Act</b>  Are the penalty orders under sections 271C/ 271CA of the Act, relating to failure to deduct/ collect tax at source, for which an appeal is pending with Commissioner of Income-tax (Appeal), covered under the Scheme?	Such penalty orders are not covered under the Scheme as they are not linked to the assessment proceedings of the taxpayer.
7	<b>Assessment proceedings consequent to search</b>  Are the assessment proceedings under section 143(3) of the Act, completed consequent to search, covered under the Scheme?	Since search cases are not covered under the Scheme, such assessment proceedings are also not eligible to avail the benefit of the Scheme.
8	<b>Consequences of unsuccessful resolution of Scheme</b>  What are the consequences in case the application under the Scheme is rejected or cancelled	In such a scenario, it shall be presumed as if the declaration under the Scheme was never filed and accordingly, proceedings pending against the taxpayer shall stand revived.

### Notification extending timeline of Scheme

The Scheme was extended *vide* notification dated 29 December 2016<sup>3</sup>, for one month to 31 January 2017.

### The takeaways

The CBDT has clarified some of the ambiguities with respect to the Dispute Resolution Scheme, 2016 and has extended the due date thereof. While these clarifications ought to have been issued much earlier, they would be helpful for taxpayers in

evaluating the settlement of their pending litigation under the Dispute Resolution Scheme, 2016.

### Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

<sup>3</sup> Notification No. 124/2016/F. No. 142/11/2016-TPL

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