

**DIRECT TAX
DISPUTE
RESOLUTION
SCHEME, 2016**

NANUBHAI DESAI & Co.



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DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

The Finance Act, 2016 introduced the Direct Tax Dispute Resolution Scheme (the Scheme) with a key objective to reduce the pending direct tax litigation. The Scheme provides an opportunity to taxpayers to settle their past cases by making payment of the prescribed tax, interest or penalty in respect of any tax arrear or specified tax. Litigation has been a major area of concern in direct taxes. In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, it has introduced this scheme in relation to tax arrear and specified tax. The Scheme is provided in Chapter X of the Finance Act, 2016 having sections from Sections 200 to 211. The Scheme is applicable from 1 June 2016.

The Central Government has, vide Notification dated 26 May 2016, notified the Direct Tax Dispute Resolution Scheme Rules, 2016 (the Rules) for carrying out the provisions of the Scheme. The Central Government, vide a separate Notification dated 26 May 2016, has notified 31 December 2016 as the date on or before which a person may make a declaration to the designated authority under the Scheme.

ELIGIBILITY FOR DECLARATION

- The scheme is applicable for the following taxes:
 - a) “Tax arrear” means, the amount of tax, interest or penalty determined under the Income-tax Act, 1961 or the Wealth-tax Act, 1957 in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on 29 February 2016
 - b) “Specified tax” means a tax
 - (i) which is determined in consequence of or validated by any amendment made to the Income-tax Act, 1961 or the Wealth-tax Act, 1957 with retrospective effect and relates to a period prior to the date on which the Finance Act amending the Act or Wealth-tax Act, 1957 as the case may be, received the assent of the President of India; and
 - (ii) a dispute in respect of such tax is pending as on 29 February 2016
- The provisions of the scheme shall however not apply with respect to tax arrears or specified tax relating to:
 - a) Search or survey cases where declaration is with respect to tax arrear.

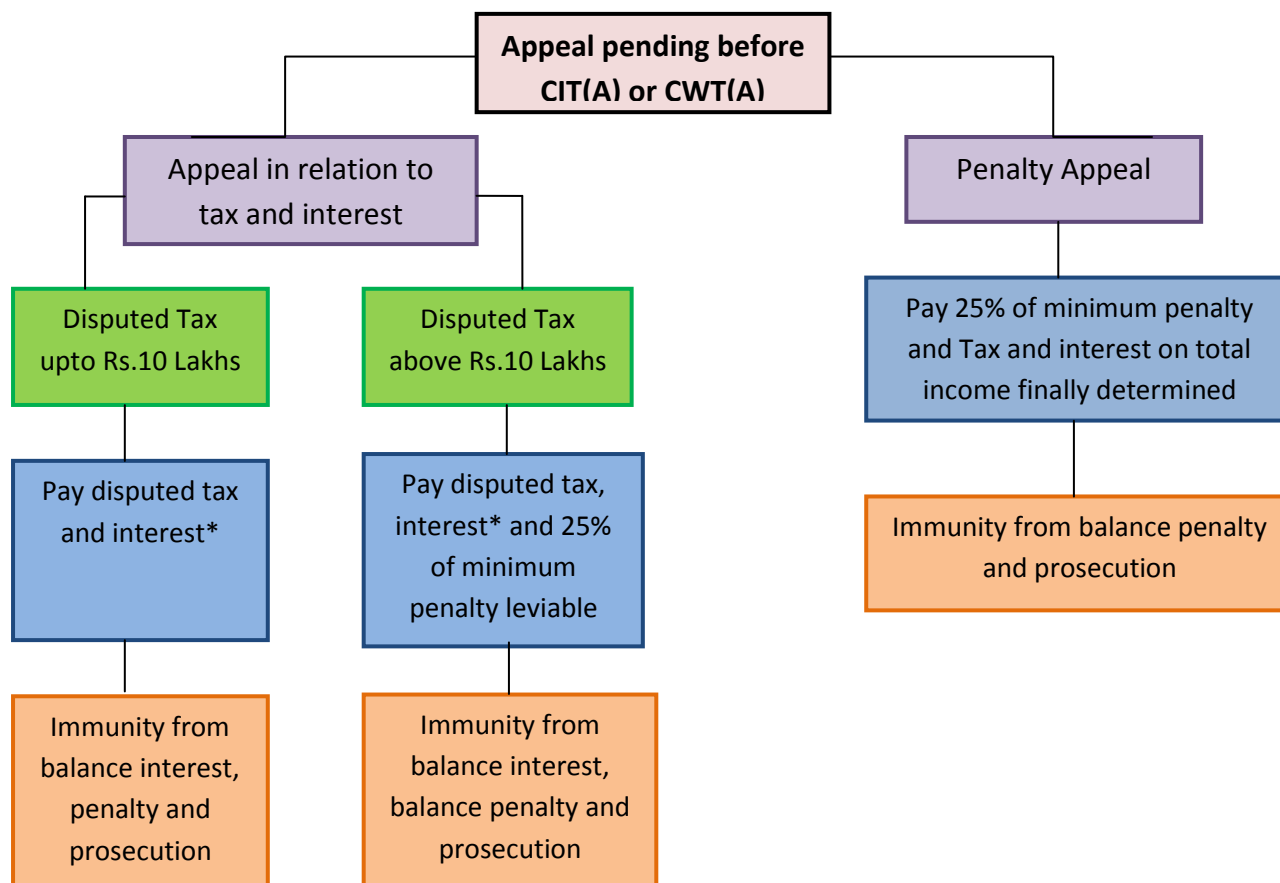
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- b) Cases where prosecution has been instituted on or before date of filing of declaration.
 - c) Cases relating to undisclosed foreign income or assets.
 - d) Cases where information is received under Double Tax Avoidance Agreement. u/s. 90 or 90A of the Act.
 - e) Persons in respect of whom order of detention is passed under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subject to certain conditions.
 - f) Person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts.
 - g) Person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

PERIOD OF DECLARATION

- The declaration under the scheme is to be made from 1st June, 2016 (As per Sec 202 of the Finance Act, 2016).
- The Central Government, vide a separate Notification dated 26 May 2016, has notified 31st December, 2016 as the date on or before which a person may make a declaration to the designated authority under the Scheme.

DECLARATION OF TAX PAYABLE

- Immunity in case of Tax Arrears



*Interest is to be calculated upto the date of assessment or reassessment order

- Immunity in case of specified Tax - only payment of disputed tax is to be done and get full immunity from interest and penalty.
- Immunity from prosecution is available in both the above cases.

DECLARATION AND CONDITIONS OF DECLARATION

- Declaration has to be made in duplicate in Form 1 (Rule 3(1) of the Rules), and to be filed before the designated authority.
- Where the declaration shall be deemed to have been withdrawn:
 - is in respect of tax arrear
 - Appeal in respect of the disputed income, disputed wealth and tax arrear pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals)

- Where the declaration is in respect of specified tax and the declarant has:
 - filed any appeal before CIT(A) or CWT(A) or ITAT or HC or SC or any Writ Petition before HC or SC against order of specified tax, withdraw such appeal or petition and furnish proof of such withdrawal along with the declaration.
 - initiated any proceeding for arbitration, conciliation or mediation or has given notice thereof, withdraw such notice or claim prior to declaration and furnish proof along with the declaration.
- Waiving right of Declarant:
 - Where declaration is with respect to specified tax, declarant shall also furnish an undertaking in Form 2 (Rule 3(2) of the Rules) waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the specified tax which may otherwise be available to him.
- Inaccurate particulars or failure of conditions:
 - it shall be presumed as if the declaration was never made under the Scheme and all the consequences under the Income-tax Act or the Wealth-tax Act, as the case may be, under which the proceedings against the declarant are or were pending, shall be deemed to have been revived where:
 - any material particular furnished in the declaration is found to be false at any stage; or
 - the declarant violates any of the conditions referred to in this Scheme; or
 - The declarant acts in a manner which is not in accordance with the undertaking given by him.

RESTRICTION ON APPELLATE AUTHORITY OR ARBITRATOR, CONCILIATOR OR MEDIATOR

- Appellate authority or arbitrator, conciliator or mediator cannot proceed to decide any issue in relation to specified tax made in declaration or in relation to order passed by designated authority with regards to sum payable by the declarant.
- To be signed by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961 (the Act).

TIME AND MANNER OF PAYMENT

Grant of Certificate by designated authority	within a period of sixty days from the date of receipt of the declaration
Declarant shall pay the sum	<ul style="list-style-type: none"> • within thirty days of the date of receipt of the certificate • intimate the fact of such payment to the designated authority along with proof thereof • designated authority shall thereupon pass an order stating that the declarant has paid the sum.

- Determination of amount payable in Form 3 (Rule 4) within 60 days of receipt of declaration.
- Payment and intimation in Form 4 (Rule 5) within 30 days of receipt of certificate.
- Pursuant to the above procedure an order for full and final settlement in Form 5 for tax arrear and Form 6 for specified tax shall be passed by the designated authority (Rule 6).
- Every order as passed above shall be conclusive evidence as to matters stated therein and no matter covered by such order shall be reopened in any other proceedings. Further, any payment made shall not be refundable under any circumstances.
- Any amount paid in pursuance to declaration shall not be refundable under any circumstances.
- No benefit, concession or immunity shall be given to the declarant in any proceedings other than those in relation to which the declaration has been made.

DETAILS OF FORMS FOR SCHEME

- The table below summarises the various Forms:

Form No.	Particulars	Time Line
Form – 1	Form of declaration to be made by the declarant in respect of 'tax arrear' and 'specified tax'	Declaration can be made on or after 1 June 2016, and upto 31 December 2016
Form – 2	Undertaking to be filed by the declarant in respect of 'specified tax'	To be furnished along with Form-1
Form – 3	Certificate of intimation to be issued by the designated authority	To be issued within 60 days from date of receipt of the declaration in Form-1
Form – 4	Intimation of payment to be filed by declaration	To be filed within 30 days of the date of receipt of certificate in Form-3
Form – 5 & Form – 6	Order to be passed by the designated authority for full and final settlement of 'tax arrears' (Form-5) and 'specified tax' (Form-6)	No time limit specified

GRANT OF IMMUNITY

- The designated authority shall, subject to the conditions provided in section 204, grant immunity under the Income tax Act or the Wealth-tax Act—
 - immunity from instituting any proceedings in respect of an offence
 - immunity from imposition or waiver, as the case may be, of penalty
 - specified tax covered in the declaration
 - tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty
 - waiver of interest
 - specified tax covered in the declaration
 - tax arrear covered in the declaration to the extent the interest exceeds the amount of interest referred

SCHEME NOT APPLICABLE

The provisions of this Scheme shall not apply:

- Assessment made pursuant to search.
- Assessment made pursuant to survey conducted by the department.
- Assessment in respect of which prosecution proceedings have been instituted on or before the date of filing the declaration.
- Tax liability relating to undisclosed income from a source located outside India or undisclosed asset located outside India.
- Assessment or reassessment made on the basis of information received by the Government of India under the agreement for exchange of information with any other country.
- In the case of a person in respect of whom an order of detention has been passed under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the order has not been revoked or set aside by the competent Court.
- In case of a person in respect of whom prosecution has been instituted on or before filing of declaration or such person has been convicted of any offence punishable under the provisions of Indian Penal Code, The Unlawful Activities (Prevention) Act, 1967, The Narcotic Drugs and Psychotropic Substances Act, 1985, The Prevention of Corruption Act, 1988 or for enforcement of any civil liability.
- In case of a person notified u/s. 3 of The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

POWERS OF CENTRAL GOVERNMENT

- Issue such directions or orders to the authorities, as it may deem fit, for the proper administration of this Scheme.

- If consider necessary or expedient, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may.
- Remove the difficulty which arises in giving effect to the provisions of this Scheme. No such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.
- Make rules for carrying out the provisions of this Scheme by notification in the Official Gazette.

AMBIGUITIES IN SCHEME

- Lack of clarity on refund:
 - The taxes paid pursuant to declaration made under the scheme are non-refundable.
 - Clarity on getting tax refund after opting for the scheme will be a concern for taxpayers who have already made tax/ interest/ penalty payment before filing the appeal.
- Impact on other assessment years:
 - Taxpayers may opt for the scheme for one of the assessment years.
 - Concern whether opting for the scheme for one of the years would have an adverse impact on similar appeals for other years.
- Consequences of non-payment of taxes within 30 days:
 - As per the scheme, after communication of tax liability by the designated authority, the taxpayer is required to make payment within 30 days.
 - If tax payment is not made within 30 days of receipt of intimation from the tax department what are the consequences? Will there be extension of time limit?

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- Review the relevant information and documents and undertake compilation of necessary information and documents for the purposes of making the declaration.
- We could highlight the applicability of the relevant provisions of Direct Tax Dispute Resolution Scheme, 2016 as well as provisions of Chapter X.
- We can suggest on the course of action that you should follow for necessary compliance of the provisions of Direct Tax Dispute Resolution Scheme, 2016.
- We can advise and assist on appropriate supporting documents that should be secured by the Client/your Group/you.
- We can assist in preparing and finalizing, forwarding/filing the necessary form of declaration.
- We can also advise on the necessity of filing revised form of declaration.
- We can advise and assist in making payment of tax/penalty as prescribed under Chapter X of Finance Act 2016 – Direct Tax Dispute Resolution Scheme, 2016.
- We can assist in securing necessary confirmation from the tax office in pursuant to the declaration made.