

EY Tax Alert

Maharashtra government introduces scheme to settle pre-GST tax disputes

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Executive summary

Government of Maharashtra has passed an ordinance¹ called Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019 (Settlement Scheme) to provide an opportunity to tax payers to settle the arrears of tax and related dues under various state laws and central sales tax law (CST) in the pre-GST regime.

The key features of the scheme are:

- ▶ Scheme covers the arrears in relation to statutory order, recommendations in audit report, returns/revised returns, notices or self-assessed dues pertaining to the period:
 - ▶ Up to 31 March 2010. Arrears pertaining to this period shall be settled with higher waiver of disputed tax and other dues vis-a-vis the subsequent period
 - ▶ 1 April 2010 to 30 June 2017
- ▶ Scheme has been introduced in two phases:
 - ▶ 1 April 2019 to 30 June 2019. Settlement during this phase shall be eligible for higher waiver of disputed tax and other dues as compared to subsequent phase
 - ▶ 1 July 2019 to 31 July 2019
- ▶ For filing application under the scheme, appeals pending before various forums including Tribunal or Court is required to be withdrawn unconditionally either wholly or partly
- ▶ Scheme will apply even to a person not registered under the relevant laws and to person who had availed benefit under any of the previous amnesty schemes

¹Maharashtra Ordinance No. V of 2019 dated 6 March 2019

Background

- ▶ Government of Maharashtra (Government) has issued an ordinance dated 6 March 2019 and has announced a scheme to settle arrears of tax demands and other dues.
- ▶ The objective of this Settlement Scheme is to offer a window for the closure of pre-GST indirect tax disputes and to motivate the non-filers to file their pending returns.
- ▶ Broadly, the ordinance provides for part or full waiver of disputed tax and other dues, subject to fulfilment of conditions.
- ▶ Government has also issued Notification² dated 7 March 2019 and the Trade Circular³ dated 8 March 2019 in this regard. Further, vide Order⁴ dated 7 March 2019, various forms under the Scheme have been prescribed.

Key Features

Coverage of Settlement Scheme

- ▶ The scheme is for settlement of arrears of tax, interest, penalty or late fee under various laws as given below:
 - ▶ The Central Sales Tax Act, 1956;
 - ▶ The Bombay Sales of Motor Spirit Taxation Act, 1958;
 - ▶ The Bombay Sales Tax Act, 1959;
 - ▶ The Maharashtra Purchase Tax on Sugarcane Act, 1962;
 - ▶ The Maharashtra State Tax on Profession, Trades, Callings and Employments Act, 1975;
 - ▶ The Maharashtra Sales Tax on the Transfer of Right to use any Goods for any Purpose Act, 1985;
 - ▶ The Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987;
 - ▶ The Maharashtra Tax on Luxuries Act, 1987;
 - ▶ The Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989;
 - ▶ The Maharashtra Tax on Entry of goods into Local Areas Act, 2002; and
 - ▶ Maharashtra Value Added Tax Act, 2002 (MVAT Act).
- ▶ "Arrears of tax, interest, penalty or late fee" has been defined to mean the amount of tax, interest, penalty of late fee related to pre-GST period which are:
 - ▶ payable as per any statutory order;
 - ▶ admitted in return or revised return but not paid either wholly or partly;
 - ▶ determined and recommended by the auditor in the audit report;
 - ▶ payable as per notice issued in relation to any proceedings under relevant act or
 - ▶ determined by the assessee on *suo moto* basis.
- ▶ The applicant shall not be entitled to any waiver in respect of undisputed tax as defined in the Scheme.
- ▶ For the purpose of Settlement Scheme, amount of tax

admitted in return is covered in the scope of undisputed tax. Waiver in respect of such tax is not available.

- ▶ The scheme is introduced in two phases and waiver shall be determined in accordance with period of arrears specified below:
 - ▶ Arrears of tax and other dues for the period (i) upto 31 March 2010 and (ii) during 1 April 2010 till 30 June 2017.
 - ▶ First settlement phase shall be from 1 April 2019 to 30 June 2019. Whereas, second settlement phase will be from 1 July 2019 to 31 July 2019.
- ▶ The extent to which benefit of waiver is available, has been specified in the annexures appended to the ordinance and the same is reproduced below:

Arrears for the period upto 31 March 2010

Nature of arrears	First Phase (1 April 2019 to 30 June 2019)		Second Phase (1 July 2019 to 31 July 2019)	
	Amt to be paid	Amt of waiver	Amt to be paid	Amt of waiver
Un-disputed Tax amount	100%	-	100%	-
Disputed Tax amount	50%	50%	60%	40%
Interest *	10%	90%	20%	80%
Penalty	5%	95%	10%	90%
interest or penalty or both **	-	100%	-	100%
Late Fee ***	-	100%	-	100%

Arrears for the period from 1 April 2010 to 30 June 2017

Nature of arrears	First Phase (1 April 2019 to 30 June 2019)		Second Phase (1 July 2019 to 31 July 2019)	
	Amt to be paid	Amt of waiver	Amt to be paid	Amt of waiver
Un-disputed Tax	100%	-	100%	-
Disputed Tax	70%	30%	80%	20%
Interest*	20%	80%	30%	70%
Penalty	10%	90%	20%	80%
interest or penalty or both **	-	100%	-	100%
Late Fee ***	-	100%	-	100%

* Amount of interest payable as per any statutory order or returns/ revised returns.

** Amount of post assessment interest or penalty or both leviable but not levied upto the date of application by the dealer under the Relevant Act.

*** Late fees payable in respect of returns filed during the period commencing from 1 April 2019 to 31 July 2019.

² Notification No. Sett./MMB-2019/ 1/ADM-8.- dated 7 March 2019

³ Trade Circular No. 9T of 2019 dated 8 March 2019

⁴ No. ORD./MMB-2019/1/2019/ADM-8 dated 7 March 2019

- ▶ Waiver amount under this scheme ranges from 20% to 50% of disputed tax, 70% to 90% in respect of interest and 80% to 95% for penalty.
- ▶ Late fee upto 100% would be waived off in respect of returns filed during the period 1 April to 31 July 2019.

Eligibility for Settlement Scheme

- ▶ Following categories of taxpayers can apply for Settlement Scheme:
 - ▶ Tax-payers, whether registered or not under the relevant Act at any point of time.
 - ▶ Tax-payers who have previously availed benefit under any of the Amnesty Schemes declared by the government.
- ▶ The benefit of Settlement Scheme is not available in respect of any statutory orders passed or returns or revised returns filed after 15 July 2019. However, for the waiver of late fees, assessee shall be eligible under the scheme even if the return is filed upto 31 July 2019.
- ▶ The cases which are remanded by the appellate authority and the final order is not passed by the assessing authority upto 15 July 2019, the benefit of Settlement Scheme cannot be availed by the assessee. However, if the assessee desire to take the benefit of the Settlement Scheme, he can calculate the arrears without waiting for final order. Basis such calculation, he can file application for settlement before 15 July 2019.
- ▶ If the proposed settlement amount of arrears relates to any credit which has been transferred to Electronic Credit Ledger under GST Law, then such application for settlement would be entertained only after the corresponding input tax credit is reversed.
- ▶ Such reversal of input tax credit would be equivalent to the amount for which the settlement is preferred by the applicant.

Withdrawal of Appeal

- ▶ Any appeal pending before the appellate authority or the Tribunal or the Court, shall be withdrawn unconditionally by the applicant. The appeal can be withdrawn partly on certain issues to avail the benefit of Settlement Scheme.
- ▶ However, it has been clarified in the circular dated 8 March 2019 that any appeal if preferred against audit objections, then such appeal is not permitted to be withdrawn. Hence, the assessee and appellate authority are suggested to finalize the appeal expeditiously before 15 July 2019, so that one can take the benefit of the scheme.
- ▶ The transactions that shall constitute an issue has been notified under the scheme to include additional tax liability due to declaration forms, disallowance of set-off, mismatch of set-off, error in computation or any disallowances by the assessing authority.
- ▶ It has also been clarified in the notification that interest,

penalty or late fees associated with tax or return or otherwise would not alone constitute an issue.

Procedure and conditions for application

- ▶ Separate applications are required to be filed for each class of arrears, within the prescribed time limit in both the phases.
- ▶ Application is to be filed in appropriate forms along with the payment proof of requisite amount and documents as specified in order dated 7 March 2019.
- ▶ Application for settlement of arrears payable is to be filed in:
 - ▶ Form-I: for dues as per statutory order;
 - ▶ Form-IA: for dues other than statutory order like return/ revised return dues, dues based on the recommendations in audit report or self-assessed dues or as per notice of assessment.
- ▶ The return dues would mean, the amount that has remained unpaid either wholly or partly as on 1 April 2019 and also covers the dues related to return or revised return filed during 1 April 2019 to 15 July 2019.
- ▶ The requisite amount should be determined as per the annexures provided in ordinance and accordingly payment has to be done before the application is filed.
- ▶ However, payment made before 1 April 2019 would not be considered as payment of requisite amount and same would be adjusted to calculate the amount available under scheme. To mitigate the hardship of assessee, the scheme specifies that such adjustment would be in sequence of tax, interest and penalty unlike the provision of MVAT Act where the sequence was interest, penalty and lastly the tax.
- ▶ There are separate provisions for determining the requisite amount in case of entry tax. The same is clarified in detail vide trade circular dated 8 March 2019.
- ▶ For settlement of arrears in respect of return dues, separate applications is to be filed for each such return or revised return. However, if return pertains to same financial year, single application will suffice.
- ▶ Application relating to revised return will not be entertained if such revision is done after commencement of scheme and such revision results in reduction of tax or interest or both. However, if such reduction is due to payment of tax or interest in cash during the intervening period of filing the original return and revision of such return, then there is no restriction for application under the scheme.

- ▶ The applicant should make sure that requisite amount is paid in full with application in first phase itself to take the benefit of higher waiver on entire amount. If applicant makes payment less than the amount determined, then benefit under this scheme will be available proportionately with respect to the amount paid in the respective phases.
- ▶ If any amount which was short paid while filing an application in first phase is paid after 30 June 2019 but before 31 July 2019, then the benefit of higher waiver would be proportionately available only on the amount paid in first phase. In case of successive payment done after 30 June 2019, benefit would be calculated in accordance with second phase.
- ▶ Similarly, if application is filed in second phase and any short paid amount in respect of such application is made good after 31 July 2019, then proportionate benefit would be available of the amount paid before 31 July 2019. No waiver in respect of amount paid after 31 July 2019 is admissible under the scheme.

Settlement order, its revocation and non-availability of refund

- ▶ Cases settled under the Settlement Scheme would be conclusive and same shall not be re-opened.
- ▶ However, revocation of settlement order can be done by designated authority within two years if benefit has been obtained by the applicant by furnishing incorrect or false information or where material facts were suppressed or information was concealed.
- ▶ Under no circumstances the applicant is entitled to get refund of amount paid under this ordinance.

Comments

Maharashtra government's move to bring the Settlement Scheme with an objective to relieve the state tax administration and the taxpayer through early clearance of pending disputes and focus on GST implementation is a welcome measure. Success of such scheme will be critical and will depend on its execution.

One will need to be mindful that if any statutory order involves additions, other than in respect of statutory forms, which are based on the recommendations of the audit report and accepted at the time of filing the report, the tax and other dues attributable to such issues may be considered as undisputed and the benefit of settlement would not be available.

Care will have to be taken that both, tax payment and the application under settlement scheme is made during the same phase of the settlement to avoid any ineligibility or reduction of tax waiver.

It will be critical for businesses to evaluate the quantum of disputes and the nature of issues under Maharashtra state laws, which are pending at various appellate forums, before taking a decision of availing the benefit of settlement scheme.

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