

## India's Budget 2019-20 proposes Dispute Resolution Scheme for pending litigation under Excise and Service Tax laws

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### Executive summary

This Tax Alert summarizes the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 proposed in the India Budget 2019-20 for pending litigation under Central Excise and Service Tax laws.

India has significant amount of pending litigation from the pre-Goods and Services Tax (GST) regime estimated at INR3.75 trillion.<sup>1</sup> The scheme aims at quick closure of these litigation and allow businesses to move on.

The relief granted under the scheme ranges from 40% to 70% of tax dues along with a full waiver of interest and penalties.

Tax determined as payable under the Scheme must be paid in cash and not by utilization of input tax credits. On payment of such tax and on a discharge certificate being issued, the taxpayer shall not be liable to any interest, penalty or prosecution. Also, the matter and time period covered by such declaration will not be reopened in any other proceeding.

However, discharge certificate does not preclude issuance of a show cause notice by the tax authority for the same matter for a subsequent period or for a different matter for the same period.

The scheme shall come into force from the date to be determined and notified by the Central Government.

## Detailed discussion

### Background

- ▶ Two years have passed since the implementation of the GST in India.
- ▶ The amount of pending litigations from pre-GST regime, particularly under the Central Excise and Service tax laws, has been an area of concern. The amount involved in dispute is approximately INR3.75 trillion.
- ▶ With the need to clear this backlog, and allow businesses to move forward, a Legacy Dispute Resolution scheme has been proposed.

### Quantum of relief available

Matters pending as of 30 June 2019	Eligible tax due	Amount	Waiver (of tax due)
Appeal pending	Tax under dispute	<= INR5 million	70%
Show cause notice (SCN)	Tax demanded	> INR5 million	50%
Enquiry, investigation and audit	Tax quantified		
Orders not appealed/ order in appeal attaining finality/ taxes declared in return but not paid	Amount in arrears	<= INR5 million	60%
		> INR5 million	40%
SCN for late fee or penalty only (duty has been paid or is nil)	Late fee or penalty	–	Entire late fee or penalty
Voluntary disclosure	Tax disclosed	–	No relief

Amount of interest and penalty is also waived.

- ▶ The scheme is referred to as “Sabha Vishwas (Legacy Dispute Resolution) Scheme, 2019.”
- ▶ It will come into force from the date to be determined and notified by the Central Government.

### Enactments covered

- ▶ The scheme will cover the disputes under the following indirect tax enactments:
  - *Central Excise Act, 1944*
  - *Chapter V of Finance Act 1994* (service tax)
  - Cess payable under specified enactments like education cess, Swachh Bharat Cess, Krishi Kalyan Cess

### Ineligibility

The scheme is not available for the following persons who have:

- ▶ Filed an appeal before the appellate forum and such appeal was finally heard by 30 June 2019
- ▶ Been convicted for any offense punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration
- ▶ Been issued an SCN and the final hearing has taken place on or before 30 June 2019
- ▶ Been issued an SCN for an erroneous refund
- ▶ Been subjected to an enquiry/investigation/audit and the amount of duty involved was not quantified by 30 June 2019
- ▶ Made a voluntary disclosure–
  - (i) after being subjected to any enquiry/ investigation/ audit, or
  - (ii) having filed a return, wherein he has indicated an amount of duty as payable, but has not paid it;
- ▶ Filed an application in the Settlement Commission for settlement of a case
- ▶ Sought to make declarations with respect to excisable goods set forth in the Fourth Schedule to the *Central Excise Act, 1944* (goods on which excise duty is being levied at present i.e., tobacco and petroleum products)

### Procedure

- ▶ The person eligible to opt for the scheme must make the declaration.

- ▶ The designated committee shall verify the correctness of the declaration made.

However, in the case of voluntary disclosure, no such verification shall be made.

- ▶ Where the amount declared by the taxpayer is equal to the amount estimated by the committee, a statement indicating the amount payable shall be issued within 60 days.
- ▶ However, where the amount declared by the taxpayer is less than the amount estimated by the committee, an estimate of amount payable shall be issued within 30 days.
  - In such cases, the committee shall give an opportunity of being heard to the taxpayer.
  - After the hearing, a statement indicating the amount payable shall be issued within 60 days.
- ▶ The above timelines need to be calculated from the date of receipt of declaration.
- ▶ Payment shall be made electronically through internet banking within 30 days of issuance of the statement indicating the amount payable.
- ▶ Any appeal/reference/reply to SCN against any order or notice giving rise to the tax dues, before the appellate forum, other than Supreme Court (SC) or High Court (HC) shall be deemed to have been withdrawn.
 

For matters pending before the HC or SC, taxpayers shall file an application to the court for withdrawal.
- ▶ The designated committee shall issue a discharge certificate on payment of the amount and on submission of proof for withdrawal of appeal (wherever applicable).

### Effect of discharge certificate

The issuance of discharge certificate shall be conclusive as to the matter and time period stated therein, and:

- ▶ The taxpayer shall not be liable to pay any further duty, interest, or penalty.
- ▶ The taxpayer shall not be liable to be prosecuted.

- ▶ No matter and time period covered by such declaration shall be reopened in any other proceeding.

However, it shall not preclude issuance of SCN for the same matter for subsequent period or different matter for same period.

### Miscellaneous

- ▶ Input tax credit (ITC) cannot be used to make a payment under the scheme.
- ▶ The amount so paid cannot be availed as an ITC by the taxpayer or any other person.
- ▶ The amount so paid shall not be refunded under any circumstances.
- ▶ The amount paid as a pre-deposit at any stage of the appellate proceedings or as a deposit during enquiry, investigation or audit, shall be deducted from the amount payable.
- ▶ If the amount of such pre-deposit or deposit already paid exceeds the amount payable, no refund shall be granted for excess amount.
- ▶ The committee may modify its order to correct an arithmetical or clerical error. Such rectification can be made within 30 days of the date of issuance of a statement indicating the amount payable.

### Impact

The scheme appears to be beneficial to taxpayers considering the number of waivers proposed and the immunity from penal consequences. It also provides a one-time opportunity to settle all past disputes while stepping into a new tax era and thereby may facilitate the ease of doing business.

Businesses should evaluate the benefit of the scheme, especially taking into account the full waiver of interest, penalty and prosecution.

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### Endnote

1. Source: Budget speech.

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