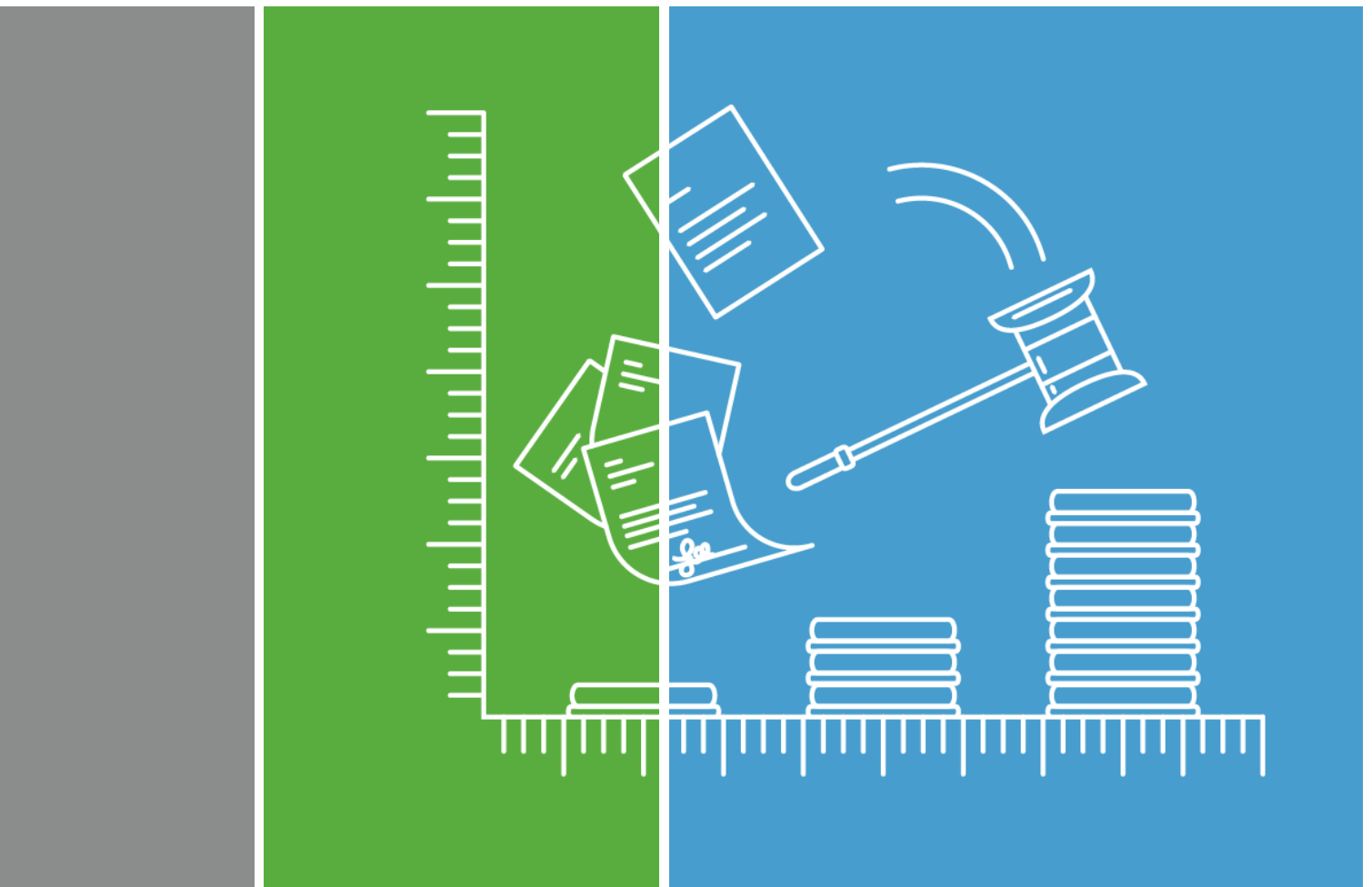


WHITE PAPER: THE DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

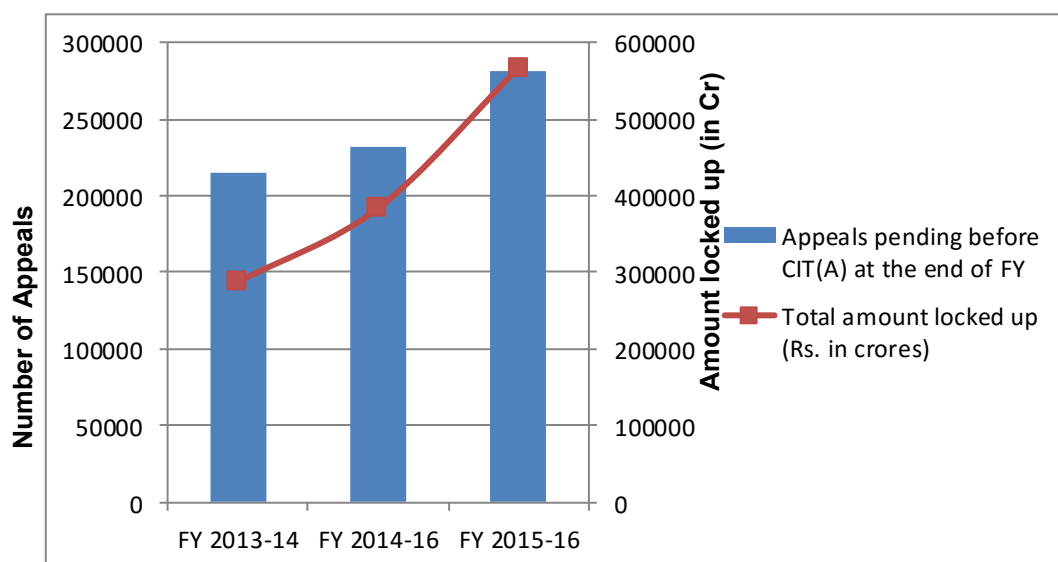
- An opportunity to resolve pending litigation



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1.0 Introduction

- 1.1 The Direct Tax Dispute Resolution Scheme ('the Scheme') has been introduced as a part of the Finance Act, 2016 providing an opportunity to taxpayers to settle their pending tax disputes. The scheme is incorporated as Chapter X of the Finance Act, 2016 comprising of sections 200 to 211.
- 1.2 This scheme is aimed at accomplishing two-fold objectives: reduction of huge backlog of cases and realization of dues expeditiously for the Government. Presently, there are about 3 lakh tax cases pending with the First Appellate Authority with disputed amount of Rs. 5.5 lakh crores. The rising trend in pending appeals is shown below:



2.0 The Direct Tax Dispute Resolution Scheme, 2016

2.1 Who can make declaration?

Every person i.e. individual, HUF, company, firm, etc., irrespective of his residential status can settle his tax dispute under this scheme in respect of tax arrears and specified tax.

Tax Arrear – Amount of tax, interest or penalty determined under the Income Tax Act, 1961 ('IT Act') or Wealth Tax Act, 1957 ('WT Act'), in respect of which **appeal is pending before the CIT(A) or CWT(A) as on 29 February 2016.**

Specified Tax – Tax determined in consequence of or is validated by an amendment made with retrospective effect in IT Act or WT Act, for a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on 29 February 2016.

2.2 Who cannot make a declaration?

The scheme shall not be applicable in case where

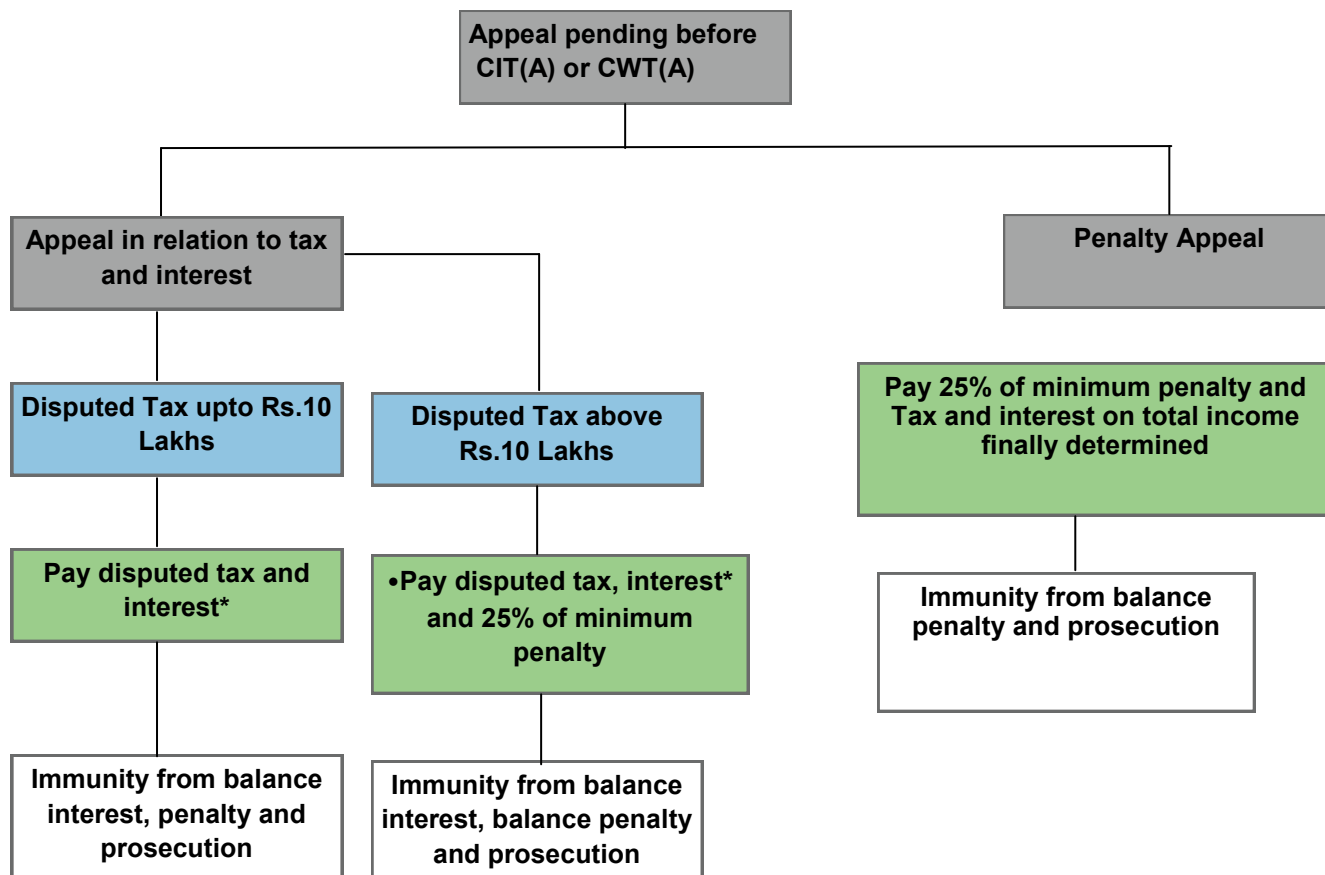
- Search or survey cases where the declaration is in respect of tax arrears.
- Cases relating to undisclosed foreign income and assets outside India
- Cases where prosecution has been instituted on or before the date of filing of declaration.
- Cases based on information received under Double Taxation Avoidance Agreement under section 90 or 90A of the IT Act where the declaration is in respect of tax arrears.
- Person notified under Special Courts Act, 1992.
- Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of Corruption Act or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

2.3 When to make declaration?

The scheme is in force from 1 June 2016 and will end on 31 December 2016. Thus, declarant has time till 31 December to settle his pending litigation.

2.4 How much to pay to get the immunity from penalty and prosecution?

2.4.1 In case of Tax Arrear: (Refer Diagrammatic Representation below)



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

2.4.1 In case of Specified Tax: Pay whole of tax and get full immunity from interest, penalty and prosecution in respect of specified tax.

2.5 How to apply under this scheme?

2.5.1 Make an application before the Designated Authority (DA) being Principal Commissioner of Income Tax (PCIT) / Commissioner of Income Tax (CIT)

Declaration in respect of tax arrears

Declarant is required to file declaration to the jurisdictional PCIT/CIT in duplicate in Form 1. Form 1 consists of general information of the declarant such as name, address, PAN, etc. along with details of assessment / penalty order passed, if any and details of appeal pending before the CIT(A) / CWT (A) as on 29 February 2016.

Declaration in respect of specified tax

Declarant is required to file declaration to the jurisdictional PCIT/CIT in duplicate in Form 1 along with an undertaking in Form 2. Form 1 consists of details of appeal / writ filed or proceedings for arbitration/ conciliation/ mediation initiated or notice given, which are pending as on 29 February 2016. Form 2 is an undertaking given by the declarant that all rights in respect of specified tax, to

pursue any remedy is being voluntarily waived. Further, if the declarant has initiated any proceeding for arbitration, conciliation or has given any notice thereof or under any agreement entered into by India with any other country outside India, he shall withdraw such notice or the claim prior to making the declaration and furnish proof thereof along with the declaration.

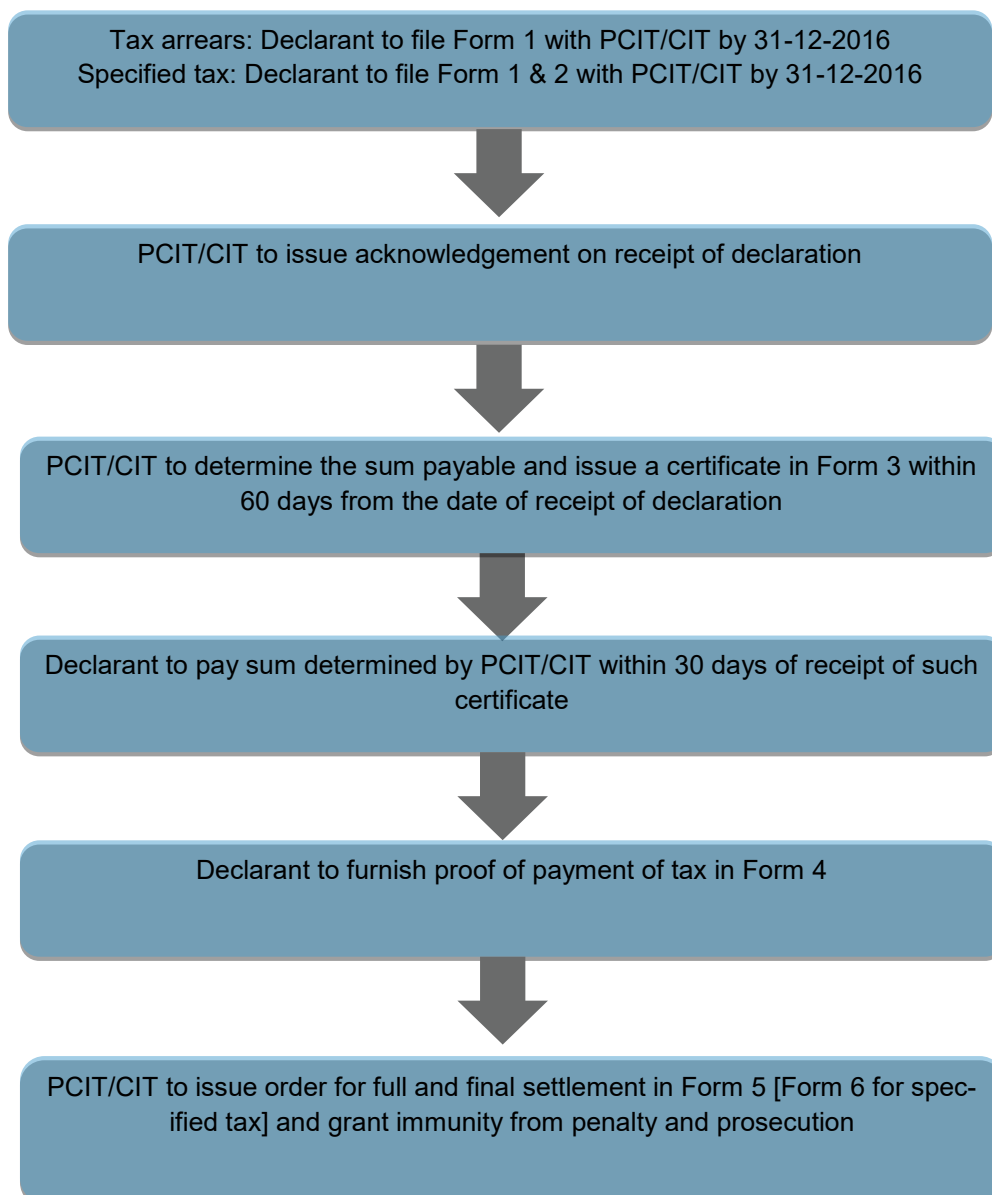
2.5.2 Determination of sum payable and payment of tax

The PCIT/CIT, on receipt of declaration, shall issue a receipt in acknowledgement thereof. The PCIT/CIT shall within 60 days from the date of receipt of declaration, determine the amount payable by the declarant and issue a certificate in Form 3 giving assessment details of tax arrear /specified tax and the amount payable by declarant and also direct the declarant to make the payment within 30 days of the receipt of certificate. After the payment, the declarant shall furnish a proof of such sum along with details required in Form 4.

2.5.3 Order for full and final settlement to be passed by the PCIT/CIT

The order in respect of tax arrear shall be in Form 5 and in respect of specified tax shall be in Form 6. Such order shall certify the final settlement of specified tax/tax arrears and grant immunity from instituting any proceeding for prosecution for any offence or from the imposition of penalty under the IT Act/ WT Act, in respect of the disputed tax/ disputed income.

The procedure under the scheme, in nutshell, is depicted in the following diagram:



2.6 Bar on reopening of settled cases

Order passed by the PCIT/CIT determining the amount payable shall be conclusive in respect of matters covered and with respect to such matter there will not be any reopening in any other proceeding of the IT Act or WT Act or any other law or any agreement whether for the protection of investment or otherwise entered into by India with any other country outside India.

2.7 Withdrawal of appeal once declaration is made

Once the declaration is made with respect to tax arrear, appeal pending before CIT (A) or CIT(W), shall be deemed to have been withdrawn.

2.8 No refund of taxes paid under the scheme

Any amount paid in pursuance of declaration shall not be refundable.

2.9 Revocation of order and revival of cases

If any material particular furnished is found to be false at any stage or the declarant violates any of the conditions of the scheme, the declaration shall be presumed to be never had been made, and pending proceedings shall revive.

2.10 Benefit restricted to matters covered under scheme

This scheme cannot be invoked to avail any benefit, concession or immunity in respect of any proceedings other than those in relation to which the declaration has been made.

2.11 Certain issues

2.11.1 Taxpayer's case pending before CIT (A) on 29th February, 2016 but disposed of on or before the date of declaration

Under this scheme, the taxpayer is required to make declaration regarding disputed income and tax arrears (i.e. amount of tax, interest or penalty) in respect of which appeal is pending before the CIT (A) as on 29th February 2016.

The scheme further says that consequent to such declaration the appeal before CIT (A) shall be deemed to have been withdrawn. It is to be noted that the scheme has come into effect from 1 June 2016 and will continue till 31 December 2016.

In this way, the scheme contemplates that case of the taxpayer should be pending on 29th February 2016 as well as on the date of declaration. In such cases, the question arises as to what will happen if the case was pending on 29 February 2016, but the same was decided by the CIT(A) let us say, on 15th March and the taxpayer filed an appeal before the Tribunal, which is pending on the date of declaration.

This aspect needs clarity as to whether such taxpayer shall be eligible under the scheme or not. However, from CBDT letter dated 19 July 2016¹, it may be inferred that appeal should be pending before CIT (A) on 29th Feb 2016 as well as on the date of declaration.

2.11.2 Partial withdrawal of dispute is not permitted - it's either all or nothing

It is often a case where the taxpayer's position in respect of some issues is strong and with respect to remaining issues, his position is weak. In such a case, ideally, the taxpayer would have chosen to continue to litigate on former issues and settle the tax dispute with respect to latter issues by availing the benefit of this scheme. However, the scheme does not seem to permit partial withdrawal of tax dispute as entire appeal before the CIT (A) shall be deemed to have been withdrawn on making declaration.

1. Letter F. No.279/MISC./M-74/2016-ITJ dated 19-7-2016 (Reference in Annexure B on the Standard Operating Procedure for Direct Tax Dispute Resolution Scheme 2016)

2.11.3 No relief under this scheme if entire sum already paid

Under this scheme, the declarant is required to pay the sum determined by the PCIT/CIT within 30 days of the date of receipt of the certificate (in Form 3) and intimate the fact of such payment to the PCIT/CIT along with proof thereof and the PCIT/CIT shall thereupon pass an order for full and final settlement of tax arrears. In this context, the issue arises as to what will happen if the taxpayer had paid entire tax demand, however under protest, so as to protect himself against the interest liability in future. The scheme does not specifically provide any adjustment of taxes already paid against the sum determined by the PCIT/CIT.

3.0 Indicative Points to be considered while opting for the scheme

Step 1: Find out whether your case is pending before CIT (A) /CIT (W) as on 29 February 2016 and has not yet been disposed of.

Step 2: Check that you are not covered under the prohibited list as enumerated in Para 2.2.

Step 3:

- Check chances of succeeding at the first appellate authority considering all the disputed issues in appeal. Remember, the scheme does not permit partial withdrawal of tax dispute as entire appeal before the CIT (A) is withdrawn on making declaration.
- Also, check if the matter is recurring in nature (arising in multiple assessment years) whether the settlement of such matter would have an adverse impact in your case in future.
- Calculate tax exposure (tax, interest and penalty) under both the scenarios namely continuing to pursue the matter under appeal vis-a-vis opting for this scheme .i.e. Do the cost benefit analysis before taking the final decision.

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The purpose of this White Paper ('Paper') is to provide a brief overview of the newly introduced Direct Tax Dispute Resolution Scheme. The Paper is prepared for general use and our views as stated above would be required to be revalidated vis-à-vis the facts of each case. The Income-tax authorities or judicial authorities may or may not subscribe to the views expressed herein. Under no circumstances, our liability in respect of matters discussed in this Paper shall exceed the fees received or the damages actually suffered for this matter, whichever is less. No part of this Paper shall be reproduced without our prior written consent.

3 August 2016

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