

TAX ALERT

August 20, 2019



Clarifications on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

The Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (“**Scheme**”) promulgated *vide* Finance (No. 2) Act, 2019 (“**Act**”), is a dispute resolution cum amnesty scheme introduced to reduce the massive backlog of pending indirect tax litigations. The date notifying its operationalization and the detailed Rules governing the modalities of the Scheme are still awaited. However, the Central Board of Indirect Taxes and Customs (“**CBIC**”) has in the interim period released Frequently Asked Questions (“**FAQs**”) on August 09, 2019 to the following operational questions:

1. ELIGIBILITY UNDER THE SCHEME

1.1. Settlement Commission

Declarations cannot be made where an application in connection therewith has already been filed before the Settlement Commission.

1.2. Voluntary disclosure

A taxpayer is restricted from making a voluntary disclosure after being subjected to an enquiry or investigation or audit under an indirect tax legislation.

However, FAQs state that a declarant seeking to make a voluntary disclosure with respect to unpaid tax dues which had been indicated as payable in returns would be able to file declaration under the Scheme. It is pertinent to note that the Act specifically excludes such taxpayers from making declarations under the Scheme. Thus, there appears to be an anomaly.

Where a false declaration of material particulars is detected within a period of 1 year from the date of issue of discharge certificate, it would be presumed that the declaration was never made and the declarant would be subject to proceedings under the applicable indirect tax legislation.

2. SCN COVERING MULTIPLE ISSUES / SCN TO MULTIPLE NOTICEES

A declarant would not be allowed to file declarations selectively on certain issues out of multiple issues covered in a Show Cause Notice (“**SCN**”) but would have to cover a SCN in entirety.

The issue of a discharge certificate with respect to a matter for a time period would not preclude the issue of a SCN on the same matter for a subsequent

period or a different matter for the same period.

In relation to SCNs issued to multiple persons, where all noticees are jointly and severally liable to pay the underlying tax dues, the FAQs clarify that tax dues of a declarant noticee would be the entire amount of tax dues under such SCN.

In a case where a SCN was issued demanding duty from a main noticee and proposing penal action against the noticee and co-noticees, such co-noticees would have to make independent declarations for waiver of penalty under the Scheme. Such declarations can be made only after the main noticee has settled the tax dues under such SCN.

3. FILING & PROCESSING OF E-DECLARATIONS

3.1. E-filing

Declarations would have to be made electronically on the portal (<https://cbic-gst.gov.in>). On receipt of a declaration, the system will generate an auto acknowledgement bearing a unique reference number which would be used for all future references to the declaration.

3.2 Processing of declaration and payments

The designated committee will verify all the claims (except voluntary disclosures) and issue a statement estimating the amount of tax dues payable by the declarant in case such estimate exceeds the amount declared. Pursuant to the same, in case of a disagreement and on request by the concerned declarant, an opportunity to be heard would be provided to such declarant. On finalization of the tax dues payable by a declarant and issuance of statement for the same by the designated committee, the declarant would be required to discharge such tax dues as indicated in the statement electronically within 30 days.

3.3 Arithmetic/ clerical errors

The FAQs clarify that where the statement indicating the amount payable by the declarant suffers from an arithmetical / clerical error which is apparent on the face of record, the designated committee may on its own or on such error being pointed out by declarant modify its order within 30 days of issue of statement.

3.4 Withdrawal of reply/ appeal/ writ/ reference

Any appeal, reference or reply to SCN filed by a declarant in relation to tax dues for which a declaration is filed would be deemed to have withdrawn. In case of writ petition or appeal or reference before the Hon'ble Supreme Court or Hon'ble High Courts, the declarant shall have to file an application for their withdrawal and shall furnish the proof of such withdrawal to the designated committee. Basis the proof of payment and proof of withdrawal, within 30 days, the designated committee will issue a discharge certificate in an electronic form.

4. MISCELLANEOUS

4.1. Pre-deposit/ deposit

Any amount paid by a declarant as deposit during enquiry or pre-deposit in appeal in connection with the subject tax dues would be deducted from the amount payable by the declarant. However, where such pre-deposit or deposit exceeds the amount payable by the declarant as per the statement issued by the designated committee, no refund of such excess would be available to the declarant.

4.2. Input Tax Credit

The declarant can neither pay any amount under the Scheme through input tax credit nor can any amount paid under the Scheme be available as input tax credit to the declarant.

OUR VIEW

While the FAQs seek to clarify and reaffirm various aspects of the Scheme, there continue to be ambiguities on the following issues:

1. Eligibility of disputes remanded back to the lower authorities for calculation or deciding basis the order of CESTAT or High court including cases which have been referred back to the adjudicating authority by the Settlement Commission;
2. Treatment of duties paid under protest;
3. Whether a calculation error made by a declarant can be rectified before the issue of liability statement by the designated committee; and
4. Time-limit for filing of declarations by co-noticees.

The Central Government is yet to release Rules with respect to the Scheme. It is expected that the above-mentioned impending concerns of the taxpayers would be addressed by these Rules.

Disclaimer

All information given in this alert has been compiled from credible, reliable sources. Although reasonable care has been taken to ensure that the information contained in this alert is true and accurate, such information is provided 'as is', without any warranty, express or implied as to the accuracy or completeness of any such information.

Cyril Amarchand Mangaldas shall not be liable for any losses incurred by any person from any use of this publication or its contents. This alert does not constitute legal or any other form of advice from Cyril Amarchand Mangaldas.

Should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us at the following coordinates.

Cyril Shroff

Managing Partner
cyril.shroff@cyrilshroff.com

Mekhla Anand

Partner
mekhla.anand@cyrilshroff.com



cyril amarchand mangaldas
advocates & solicitors

cyril amarchand mangaldas

mumbai | new delhi | bengaluru | chennai | hyderabad | ahmedabad

www.cyrilshroff.com