

TAX FLASH NEWS

8 April 2022

CBDT notifies e-Dispute Resolution Scheme, 2022

Executive Summary

The Finance Act, 2021 introduced a new Scheme under Section 245MA to provide for the constitution of 'Dispute Resolution Committee' (DRC). The DRC will help to resolve disputes of small taxpayers having a total income of up to INR 50 lakh and a disputed income of up to INR 10 lakh. The DRC will have the powers to reduce or waive penalty or give immunity from prosecution for any offence punishable under the Income-tax Act, 1961.

As per Section 245MA(3), the Central Government is required to make a scheme, by notification in the Official Gazette, for the purposes of dispute resolution, so as to impart greater efficiency, transparency and accountability.

Recently, the Central Board of Direct Taxes (CBDT) has issued a Notifications¹ prescribing e-Dispute Resolution Scheme, 2022 and its Rules.

e-Dispute Resolution Scheme, 2022

Scope of the scheme

The DRC will made dispute resolution under the Scheme on applications made for dispute resolution in respect of any variation in the specified order by such persons or class of persons, as may be specified by the CBDT.

Procedure in dispute resolution

• **Application for dispute resolution**

The taxpayer who fulfils the specified conditions may file an application electronically for dispute resolution to DRC designated for the region of Principal Chief Commissioner of Income-tax having jurisdiction over the taxpayer. The application shall be filed in the Form No. 34BC

- Within such time from the date of constitution of the DRC, as may be specified by the CBDT, for cases where appeal has already been filed and is pending before the Commissioner (Appeals); or
- Within **one month** from the date of receipt of specified order, in any other case;

The application shall be submitted by email to the official email of the DRC along with proof of payment of tax on the returned income, if available with a fee of INR 1000.

• **Screening of application**

- The DRC shall examine the application. After such examination, the DRC, where it considers that the application should be rejected, shall serve a notice calling upon the taxpayer to show cause as to why his application should not be rejected. It shall also specify a date and time for filing a response.
- DRC shall, on a request by the taxpayer, provide him an opportunity of being heard through video telephony or video conferencing facility, to the extent technologically feasible
- The taxpayer shall furnish a response to the show-cause notice within the specified date and time or such extended time as may be allowed on the basis of application made in this behalf, to the DRC
- DRC may, after considering the response furnished by the taxpayer, reject the application or proceed to decide the application on merits and where no such response is furnished reject the application

¹ CBDT Notification No. 26/2022, dated 5 April 2022 and CBDT Notification No. 27/2022, dated 5 April 2022

- The decision of the DRC that the application for dispute resolution should be allowed to be proceeded with or rejected, shall be communicated to the taxpayer on his registered e-mail address
- The taxpayer shall within 30 days of receipt of the communication that the application is admitted, be required to submit a proof of withdrawal of appeal filed under Section 246A or withdrawal of application before the Dispute Resolution Panel (DRP) to the DRC or convey that there is no aforesaid proceeding pending in his case, failing which the DRC may reject the application.

● **Procedure to be followed by DRC**

- The DRC may
 - upon admission of the application and subsequent to the receipt of the response of the taxpayer, call for records from the income-tax authority and further examine with respect to the issues covered in the application
 - seek a report from the Assessing Officer (AO) on the issues covered in the application or on any other issue arising during the course of proceedings
 - before dispose-off the application, call for further information from the taxpayer or any other person by sending an email to his registered email address
- The taxpayer shall electronically submit its response to the DRC, within the time specified or such time as may be extended by the DRC on the basis of an application in this behalf
- The DRC may, after considering the material available on record, including any further information or evidence received from the taxpayer, income-tax authority or any other person, may decide:
 - To make modifications to the variations in specified Order, which are not prejudicial to the interest of the taxpayer, and decide for waiver of penalty and immunity from prosecution in accordance with the provisions of Rule 44DAC, and pass an order of resolution accordingly; or

- Not to make modifications to the variations in the specified order, however, may decide for waiver of penalty and immunity from prosecution provisions in accordance with the provisions of Rule 44DAC, and pass an order of resolution accordingly, which shall be treated as an order not prejudicial to the interest of the taxpayer; or
- Not to make any modification to the specified order, and pass an order disposing off the application, which shall be treated as an order 'not prejudicial to the interest of the taxpayer',

within 6 months from the end of the month in which application for dispute resolution is admitted by the DRC.

- The DRC shall serve a copy of the order of resolution or order disposing off the application upon the taxpayer and also the AO for giving effect to the same, if so required
- Where the specified order is an order of the eligible taxpayer as per DRP provisions, the taxpayer shall not be eligible to file any reference to the DRP or an appeal to the Commissioner (Appeals) against the modified order
- The AO shall serve a copy of the modified order along with notice of demand upon the taxpayer specifying a date for making payment of demand;
- The taxpayer shall, furnish proof of payment of the said demand to the DRC and also to the AO
- The DRC shall, on receipt of confirmation of payment of demand, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable, in accordance with the provisions of Rule 44DAC.
- Notwithstanding anything contained in above provisions, the DRC may at any stage of the dispute resolution proceedings, if considered necessary, for reasons to be recorded in writing and after giving an opportunity of being heard to the taxpayer, decide to terminate the dispute resolution proceedings if, -
 - the taxpayer fails to cooperate during the course of such proceedings; or
 - the taxpayer fails to respond to, or submit any information in response to, a notice issued to him; or

- The Committee is satisfied that the taxpayer has concealed any particular material to the proceedings or had given false evidence.
- the taxpayer fails to pay the demand as required.
- Where the dispute resolution proceedings are terminated, the DRC shall intimate the income-tax authority for taking necessary action as per the provisions of the Act.
- Where the application has not been allowed to be proceeded with, the taxpayer may file an appeal to the Commissioner (Appeals) and the period taken by the DRC in deciding on the admission shall be excluded from the period available to file such appeal.

Powers of the Dispute Resolution Committee

The DRC shall have the power to waive penalty or grant immunity from the prosecution provisions of the Act on fulfilment of conditions specified in Rule 44DAC.

Any proceedings before the DRC shall be deemed to be a judicial proceeding within the provisions of the Indian Penal Code and every income-tax authority shall be deemed to be a Civil Court except in certain situation.

If any difficulty arises in giving effect to any order of the DRC, it may, on its own motion or on an application made by the taxpayer or the AO through the Principal Commissioner of Income-tax or the Commissioner of Income-tax remove the difficulty insofar as it is not inconsistent with the provisions of the Act.

Appeal or revision

No appeal or revision shall lie against the modified order.

Authorisation to be filed

An authorised representative appearing for the taxpayer at the hearing shall electronically file, before the commencement of the hearing, a document authorising him to appear for the taxpayer.

Exchange of communication exclusively by electronic mode

All communications between the DRC and the taxpayer or the authorised representative of the taxpayer or any other person shall be exchanged exclusively by electronic mode, to the extent technologically feasible. Further all internal communications between the DRC, or any income-tax authority shall be exchanged exclusively by electronic mode.

Authentication of electronic record

An electronic record shall be authenticated by the:

- DRC, the Principal Commissioner of Income-tax or Commissioner of Income-tax by affixing its digital signature
- The taxpayer or any other person, by affixing his digital signature if he is required under the Rules to furnish his return of income under digital signature, and in any other case by communicating through his registered email address.

Delivery of electronic record

Every notice or order or any other electronic communication under the Scheme shall be delivered to the addressee, being the taxpayer or any other person, by way of:

- Placing an authenticated copy thereof in their registered account; or
- Sending an authenticated copy thereof to the registered email address.
- Real time alert.
- The taxpayer or any other person shall furnish his response to any notice or order or any other electronic communication, under this Scheme, through his registered account, to the official email of the DRC and once an acknowledgement is sent by the DRC, the response shall be deemed to be authenticated.

No personal appearance before the Dispute Resolution Committee

- A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before the DRC or income-tax authority.
- The taxpayer or any other person or his authorised representative, may request for personal hearing so as to make his oral submissions or present his case before the DRC.
- The DRC may approve the request for personal hearing
- Where the request for personal hearing has been approved by the DRC, such hearing shall be conducted through video conferencing, including use of any telecommunication application software which supports video telephony, to the extent technologically feasible, in accordance with the procedure laid down by CBDT.

- CBDT shall establish suitable facilities for video conferencing including telecommunication application software which supports video telephony at such locations as may be necessary, so as to ensure that the taxpayer, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such taxpayer or his authorised representative, or any other person does not have access to video conferencing at his end.

Proceedings not open to the public

The proceedings before the DRC shall not be open to the public and no person (other than the taxpayer, his employee, the concerned officers of the DRC or the income-tax authority or the authorised representatives) shall, without the permission of the DRC, remain present during such proceedings, even on video conferencing or video telephony

Power to specify format, mode, procedure and processes

The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall, in consultation with the jurisdictional Principal Chief Commissioner of Income-tax or the Principal Director General of Income-tax, in charge of the DRC and with the approval of the CBDT, lay down the standards, procedures and processes for effective functioning of the DRCs under the Scheme, in an automated and mechanised environment.

DRC rules

CBDT has also issued rules and Form 34BC with respect to e-Dispute Resolution Scheme. Key rules are summarised as follows:

Constitution of Dispute Resolution Committee

- The Central Government shall constitute a DRC for every region of Principal Chief Commissioner of Income-tax for dispute resolution
- Each DRC shall consist of three members, as under:
 - Two members shall be retired officers from the Indian Revenue Service (Income-tax), who have held the post of Commissioner of Income-tax or any equivalent or higher post for five years or more; and
 - One serving officer not below the rank of Principal Commissioner of Income-tax or Commissioner of Income-tax as specified by the Board.
 - The decision of the DRC shall be by majority.

Power to reduce or waive penalty imposable or grant immunity from prosecution or both under the Act

The Dispute Resolution Committee shall, upon receipt of intimation

- Grant to the person who made the application for dispute resolution, waiver of penalty imposable or immunity from prosecution or both, in respect of the order which is the subject matter of resolution, if it is satisfied that such person has –
 - paid the tax due on the returned income in full if available; and
 - co-operated with the DRC in the proceedings before it.
- Notwithstanding anything contained above, no immunity shall be granted by the DRC in a case where the proceedings for the prosecution for an offence have been initiated before the date of receipt of the application
- An immunity granted to a person shall stand withdrawn, if such person fails to comply with any of the conditions subject to which the immunity was granted and thereupon the provisions of the Act shall apply as if such immunity or waiver had never been granted.

Our comments

The notified e-Scheme will provide clarity to the taxpayers to avail the benefit of the Scheme. It will help the taxpayers to close their disputes and avoid long drawn litigation.

The scheme does not require a person to appear either personally or through authorised representative in connection with any proceedings before the DRC or income-tax authority. Taxpayers may request for personal hearing so as to make his oral submissions or present his case before the DRC.

It would be interesting to see the implementation of this new scheme and the practical challenges once the scheme comes into operation.

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