

# TAX FLASH NEWS

3 November 2021



## CBDT notifies e-Settlement Scheme, 2021

### Executive summary

The Finance Act, 2021 has amended the provisions of the Income-tax Act, 1961 (the Act) to *inter alia* provide that the Income-tax Settlement Commission (ITSC) shall cease to operate with effect from 1 February 2021. Further, no application for settlement can be filed on or after 1 February 2021.

In order to dispose-off the pending settlement applications as on 31 January 2021, the Central Government has constituted Interim Board for Settlement (Interim Board)<sup>1</sup>. The taxpayers, in the pending cases, have an option to withdraw their applications within the specified time and intimate the Assessing Officer (AO) about such withdrawal.

As per the amended provisions<sup>2</sup>, the Central Government may make a scheme, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by (a) eliminating the interface between the Interim Board and the taxpayer in the course of proceedings to the extent technologically feasible, (b) optimising utilisation of the resources through economies of scale and (c) functional specialisation and introducing a mechanism with dynamic jurisdiction.

Recently, the Central Board of Direct Taxes (CBDT) has notified<sup>3</sup> E-Settlement Scheme, 2021 (the Scheme). This Scheme shall be applicable to pending applications in respect of which the applicant has not exercised the option under Section 245M(1)<sup>4</sup> and which has been allotted or transferred by CBDT to an Interim Board.

### CBDT Notification

#### **Applicability**

The Scheme shall be applicable to pending applications in respect of which the applicant has not exercised the option under Section 245M(1) and which has been allotted or transferred by the CBDT to an Interim Board.

#### **Interim Board**

The Interim Board shall conduct e-settlement of pending applications allocated or transferred to it as per the provisions of the Scheme. The Interim Board shall have such income-tax authority, ministerial staff, executive or consultant to assist the members of the Interim Board.

#### **Allocation of pending applications**

The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems) with the approval of CBDT, devise a process to randomly allocate or transfer the pending applications, to the Interim Boards.

#### **Procedure for settlement**

The procedure for settlement of pending applications allotted or transferred to an Interim Board shall be as follows:

- The Interim Board shall intimate the applicant about the allocation or transfer of his case to it
- The Interim Board may call for the records from the Principal Commissioner or the Commissioner and may forward the necessary information, document, evidence, report and additional facts to the

<sup>1</sup> Notification No. 91 of 2021, dated 10 August 2021

<sup>2</sup> Section 245D(11) of the Act

<sup>3</sup> Notification No. 129/2021, dated 1 November 2021

<sup>4</sup> With respect to a pending application, the taxpayer who has filed such application may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer, in the prescribed manner, about such withdrawal.

Principal Commissioner or the Commissioner and direct it to make or cause to be made further enquiry or investigation and furnish a report in accordance with and within the specified time<sup>5</sup>.

- Where the Principal Commissioner or the Commissioner fails to furnish the specified report, within the time, the Interim Board may proceed to pass the order under Section 245D(4), without waiting for that report.
- Where the report has been furnished by the Principal Commissioner or the Commissioner, the Interim Board shall forward such report to the applicant and request the applicant to submit written response to such report within the specified date and time or such extended date and time as may be allowed on the basis of an application made in this behalf.
- Where the applicant fails to furnish the response within the specified time, or within the extended time, the Interim Board may proceed to pass the order under Section 245D(4), without waiting for that response.
- The opportunity<sup>6</sup> shall be provided by the Interim Board through video conferencing or video telephony.
- The Interim Board shall before providing opportunity, forward the response, if received from the applicant, to the Principal Commissioner or the Commissioner.
- An authorised representative appearing for the applicant at the time of hearing of an application shall file before the commencement of the hearing a document authorising him to appear for the applicant and if he is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is employed at that point in time.
- The Interim Board may, on such terms as it thinks fit and at any stage of the proceedings, adjourn the hearing of the application or any matter arising therefrom.
- After hearing the applicant and the Principal Commissioner or the Commissioner, through video conferencing or video telephony, and after examination of all the information, document, record, report and evidence with it, the Interim Board shall pass order<sup>7</sup>.

- The order shall be delivered to the applicant vide the registered e-mail address along with a copy to the Principal Commissioner or the Commissioner.
- The order passed may be rectified by the Interim Board either *suo motu* or on an application made by the applicant or the Principal Commissioner or the Commissioner.
- The provisions of Chapter XIX-A<sup>8</sup> of the Act shall mutatis mutandis apply to pending applications allotted or transferred, to the Interim Boards.

### **Verification of additional facts**

Where any facts not contained in the settlement application which are sought to be relied upon, they shall be submitted to the Interim Board in writing and shall be verified in the same manner as provided for in the settlement application.

### **Proceedings shall not be open to the public**

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

### **Communication on behalf of the Interim Board**

- The opportunity for hearing through video conferencing or video telephony shall be facilitated by any Income-tax Authority as authorised by the Interim Board, who will provide the link and password to the applicant and concerned parties in advance.
- All communication of the Interim Board inward and outward shall be carried out by any Income-tax Authority as authorised by the Interim Board.

### **Communication exclusively by electronic mode**

- All communications between the Interim Board and the applicant, or his authorised representative, shall be exchanged by electronic mode.
- All communications between the Interim Board and the Principal Commissioner or the Commissioner shall be exchanged by electronic mode.

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<sup>5</sup> Allowed under Section 245D(3) of the Act

<sup>6</sup> referred to in Section 245D(4) of the Act

<sup>7</sup> under Section 245D(4) of the Act

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<sup>8</sup> Settlement of Cases

However, if any application received in a mode other than electronic mode by the Interim Board may be forwarded to the Principal Commissioner or the Commissioner electronically, to the extent technologically feasible.

- Every notice or order or any other electronic communication under the Scheme from the Interim Board shall be delivered to the addressee, being the applicant by sending an e-mail to the registered email address of the applicant or his authorised representative.
- The applicant or the authorised representative shall file his response to any notice or order or any other electronic communication, under this Scheme, to the Interim Board through his registered email address.
- The Principal Commissioner or the Commissioner shall file his response to any notice or order or any other electronic communication, under this Scheme, to the Interim Board through official electronic mail facility.

#### ***Authentication of electronic record***

An electronic record shall be authenticated by the-

- The Interim Board, the Principal Commissioner or the Commissioner, by affixing its digital signature
- The applicant or his authorised representative, 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 e-mail address.

#### ***No personal appearance before the Interim Board***

- The applicant shall not be required to appear either personally or through authorised representative in connection with any proceedings under the Scheme before the Interim Board or before any Income-tax Authority or ministerial staff posted with the Interim Board.
- 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 applicant, or his authorised representative, is not denied the benefit of this Scheme merely on the ground that such applicant or his authorised representative, or any other person does not have access to video conferencing at his end.

#### **Our comments**

Under this Scheme all the communications between the Interim Board and the applicant are to be exchanged through electronic mode. Every notice or order or any other electronic communication are to be sent to the applicant on his registered email address.

The applicant is not required to appear either personally or through authorised representative in connection with any proceedings under this Scheme. Hearings will be conducted through video conferencing including telecommunication application software which supports video telephony.

This Scheme is another initiative of the government in line with the introduction of various online schemes for tax proceedings. It will provide clarity to the applicants whose cases are pending with the Settlement Commission.



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