



# Abolition of Settlement Commission and Constitution of Dispute Resolution Committee

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The Income-tax Settlement Commission has been abolished with effect from 1st February, 2021 and no application for settlement will be accepted from that date. Clauses 54 to 65 of the Finance Bill, 2021 are relevant to deal with the consequential arrangements proposed to be made to deal with the pending settlement applications. A new institution, to be known as the Dispute Resolution Committee (DRC in short), is proposed to be set up by adding a new Chapter XIX-A, with only one section 245MA, to lay down its constitution and scope of work. It is not a substitute for the Settlement Commission but an institution within the Income-tax Department to resolve disputes arising during the course of regular assessment proceedings. We propose to deal with these two subjects separately in the following paragraphs.

## (i) Abolition of Income-tax Settlement Commission (ITSC in short)

2. Clause 59 of the Finance Bill, 2021 discontinues the ITSC by inserting sub-section (5) to section 245C of the Act to provide that no application for settlement shall be filed on or after 1st February, 2021. The pending settlement applications will also not be dealt with by the existing Settlement Commission because it stands abolished from the same date (clause 56 amending section 245B of the Act). This is despite the fact that the

terms of assignment of the existing Vice-Chairmen/Members of the Commission have not expired and they are available to dispose of the settlement applications pending before the Commission. Instead, vide clause 55 of the Bill, an interim Board (s) will be constituted by the Central Board of Direct Taxes, New Delhi (CBDT in short) each consisting of three officers of the rank of Chief Commissioners of Income-tax to dispose of the pending settlement applications. The existing members of the Commission are also of the rank of Chief Commissioner of Income-tax, the only difference being that they were appointed from a panel of senior most Chief Commissioners by the Revenue Secretary in the Ministry of Finance, Government of India, but the members in the Interim Board (s) to dispose of the pending settlement applications will be appointed by the Central Board of Direct Taxes. Option has been given to the applicants to withdraw their pending settlement applications in view of section 245M(1) of the Act within three months of the commencement of Finance Act - 2021 by sending an intimation to the Assessing Officer in prescribed manner.

3. There has also been a similar Settlement Commission in existence for indirect taxes i.e. for Customs and Central Excise set up almost simultaneously with the

Income-tax Settlement Commission. That Commission has not been abolished and will continue to be in operation.

4. The computation of tax liability and its payment through settlement by way of confession, compromise or dispute resolution has been prevalent in most of the countries of the world for a very long time. More specifically, in UK, it has been in vogue for about 100 years since 1923. Provision of this nature has also been in existence in USA, Canada, France, Germany and in several other countries. This is popularly known as the confession method of computation of income-tax liability of a person. Under this method, the taxpayer is required to voluntarily declare his true and correct income, pay the tax and interest thereon and cooperate with the Income-tax Department for ascertaining if the disclosure of income has been true and full. He then becomes entitled to waiver fully or partly from the levy of penalty and immunity from criminal prosecution. The objective is to collect due taxes from a recalcitrant taxpayer expeditiously without spending the scarce investigation sources of the Income-tax Department and providing only one chance during the life time of the taxpayer.
5. In India, the computation of income and tax liability by settlement was introduced on the basis of the recommendations of the Direct Tax Enquiry Committee, popularly known as the Wanchoo Committee after the name of the Committee's Chairman, Mr. Justice N.N. Wanchoo, the retired Chief Justice of the Supreme Court of India. The Committee gave its final report on 24th December, 1971 and the process of computation of income and tax liability by settlement by setting up the Settlement Commission was introduced in the Income-tax Act
- vide Taxation Laws (Amendment) Act, 1975 w.e.f. 1st April, 1976. Initially, there was only one Bench located at Delhi but with the increase in the popularity of the Commission and growth of applications for settlement, more and more Benches were set up. Before its recent discontinuation with effect from 1st February, 2021, the ITSC has had seven functioning Benches, three at Delhi, two at Mumbai and one each at Kolkata and Chennai.
6. No reason has been given either in the speech of the Hon'ble Finance Minister or in the Explanatory Memorandum to the Finance Bill, 2021 for the abolition of the Commission. It was providing an option to the assesseees to settle their tax disputes expeditiously within 18 months of the filing of the settlement application rather than going in for prolonged and ruinous tax litigation. Besides, as stated above, very senior Departmental officers of the rank of Chief Commissioners of Income-tax, used to hear and dispose of the settlement applications. One can only surmise that the reason for abolishing the Settlement Commission may be that the Central Government does not wish to continue with the policy of the taxpayers involved in searches and surveys getting settled their cases through the Commission and generally obtaining immunity from penalty and prosecution. Instead, the Government appears to be determined to prosecute such tax evaders to effectively curb the evil of tax evasion.
7. Be that as it may, there does not appear to be any justification for abandoning the working of the Commission abruptly with effect from 1st February, 2021. The provisions in the Finance Bill, 2021 ought to have been made effective from 1st April, 2021 as the changes in the annual budget for administration of direct taxes

are generally made on financial year basis. Even otherwise, the legal validity of this provision from 1st February, 2021 appears to be debatable as the Bill was introduced in the Lok Sabha on that date and is not enforceable as law till it is passed by both the Houses of the Parliament and assent to it is given by the Hon'ble President of India. Doubtlessly, the Parliament has the power to make a law effective from a retrospective date but it being a substantive provision materially affecting adversely the rights of the taxpayers, it ought to have been enforced through an Ordinance by the President of India if at all the Government was keen to discontinue the functioning of the Settlement Commission from 1st February, 2021 and not allowing it to dispose of even the settlement applications pending before it after that date despite the availability of adequate manpower and the requisite infrastructure for this purpose. This provision has even prevented the passing of orders of settlement in cases which had been heard before 1st February, 2021 but written orders could not be dictated due to difficulties caused by the spread of Covid epidemic thereby causing avoidable difficulties to such applicants. They will also suffer financially by being required to present and argue their settlement applications once again and that also before a differently constituted Interim Board(s). At the very least, the pending settlement applications may have been required to be disposed off by the existing Benches of the Settlement Commission since members with experience of dealing with them are available and their tenure of office has not expired.

8. The proposed discontinuation of cases by settlement also appears to be a retrograde step. It will increase tax disputes and

more importantly, it will increase the size of the unpaid income tax because of the non-payment of tax demands raised by the income-tax authorities in the course of regular assessments which will be generally disputed in appeals involving prolonged tax litigation.

9. If the main objective of disbanding the Commission with effect from 1st February, 2021 was to provide a deterrent against tax evasion by criminally prosecuting the tax evaders in search and seizure cases, it could be achieved by launching criminal prosecution proceedings in selected cases soon after the search or survey. The Settlement Commission would then get denuded of its power to grant immunity from criminal prosecution to such applicants because of the specific prohibition contained in the first proviso to section 245H(1) of the Act which specifically provides that no immunity from prosecution shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence stood already instituted against an applicant before the date of receipt of the settlement application u/s 245C.

10. The inability to launch criminal prosecution in big cases of tax frauds would also not have been any hindrance for the continuation of the Settlement Commission. As stated above, its discontinuance will not only increase tax litigation but may also encourage non-payment of taxes in search and survey cases and thus contribute significantly to the growth of income tax arrears.

**(ii) Constitution of Dispute Resolution Committee (DRC)**

11. A new Chapter XIX-AA has been inserted in the Act with one section 245MA. It provides for the constitution of one or

more DRCs in certain cases to be specified by the Board for specified taxpayers who may opt for dispute resolution. The disputes in only those cases where the returned income is Rs. 50 lakhs or less and the aggregate amount of variation to the income of an assessee by the Assessing Officer is proposed to be Rs. 10 lakhs or less will be eligible to get the disputes in their cases resolved by the institution of DRC. Although, the composition of the DRC and its work procedure will be specified by the Central Government in exercise of the powers conferred under sub-section (1) of section 245MA, it is likely to consist of two or three Commissioners of Income-tax as its functions in essence will be similar to those of a CIT (Appeals).

12. An assessee will be eligible to take the benefit of this provision only if he fulfills the specified conditions prescribed in the Explanation to Section 245MA notably; it is not a case of search or survey or involves double taxation relief u/s 90 or 90A of the Act or where criminal prosecution has not been launched under the Income-tax Act or a case involving any of the economic offences such as Conservation of Foreign Exchange And Prevention Of Smuggling Activities Act, 1974, punishable under the Indian Penal Code or Prevention of Corruption Act, 1988 or Prohibition of Benami Property Transactions Act, 1988, or Prevention of Money Laundering Act, 2002 or Unlawful Activities (Prevention) Act, 1967.
13. It can be argued that an assessee falling in the excluded categories does not deserve sympathy but even for included categories, the qualifying conditions of eligibility of returned income of only upto Rs. 50 lakhs and the addition to the disclosed income being limited to Rs. 10 lakhs or less is too small to make

this institution attractive or useful for a large number of income tax payers. More so, the recent inflationary pressures in the economy would further make the institution of the DRC eligible for a small number of taxpayers.

14. For eligible assesseees, the DRC will have the powers, under sub-section (2) of section 245MA, to reduce or waive any penalty and to grant immunity from criminal prosecution for any offence punishable under the Income-tax Act.
15. The Central Government has been empowered under sub-section (3) of section 245MA to make a scheme for the constitution of such a Committee with the object of imparting greater efficiency, transparency and accountability by (i) eliminating the interface between the DRC and the taxpayer to the extent "technologically feasible"; (ii) introducing functional efficiency and (iii) introducing the dynamic jurisdiction.
16. Thus, it appears that the DRC will also consider and decide all tax disputes in a faceless manner as in the case of regular assessments and appeals before the Commissioners of Income-tax (Appeals) and the Income-tax Appellate Tribunal, largely on the basis of written submissions. However, the use of the words "technologically feasible" in sub-section (3) permits personal interaction through video conferencing. Since the decisions of DRC would be final, it will be desirable that hearing in physical form may also be permitted in the interest of justice.
17. The scope of DRC appears to be rather limited for some other reasons also. The mandatory limit of addition being Rs. 10 lakhs or less in aggregate and the income returned being Rs. 50 lakhs or less will make the DRC applicable to a

very small number of taxpayers. The limit of Rs. 10 lakhs of addition, in particular, with small tax effect, vis-à-vis the cost of representation before the DRC through written submissions or video conferencing will itself outweigh the benefit that can be expected from the Committee. In such eligible cases, it may perhaps be more advantageous and cost effective to seek immunity from imposition of penalty and prosecution by opting for making an application to the Assessing Officer u/s 270AA of the Act under which, on payment of disputed tax, the assessee becomes entitled to the waiver of penalty and prosecution. Even in the normal course, it may not be desirable from the point of view of deterrence to spend time and energy on levying penalty and initiating prosecution in such small cases involving returned income of upto Rs. 50 lakhs and additions upto Rs. 10 lakhs.

### Recommendations

18. In the opinion of this author, it is highly desirable to avoid tax disputes. But this objective can be achieved by identifying the issues where such disputes are common and issuing clear and detailed public circulars clarifying those points. In most of other countries notably, USA, UK, Japan and Germany, they have the system of issuing detailed instructions on interpretation of statutory provisions by which income tax disputes can be prevented. In our country also, similar system was started as early as in 1898 and has been working quite satisfactorily for about 100 years. But in recent years, its scope has been narrowed down to largely issuing public circulars following the introduction of the annual Finance Act. The taxpayer's right to get Board's interpretation on a particular provision in
- the Income-tax Act has practically been given up and delegated to the Authority for Advance Rulings, an institution with limited scope for interpretation and that institution has also been discontinued by the proposed amendment of sections 245N and 245-O of the Act by this Finance Bill, 2021 with effect from a date to be notified by the Central Government in the Official Gazette. Instead it is being replaced by a Board for Advance Rulings consisting of two members of the rank of Chief Commissioner of Income-tax as may be nominated by the Board. The interpretation of a legal provision has to have the effect of law to be followed by all the taxpayers and Department Officers. The proposed authority will not be effective as it will not have the advantage of the advice of the Ministry of Law which has the legal expertise and is the fountain head of making laws and interpreting the provisions for the various Departments of the Central Government. In the past, Board's instructions on interpreting the legal provisions used to be issued in consultation with the Ministry of Law. On very important issues, the Secretary of the Ministry of Law used to consult the Attorney General of India.
19. In our opinion, it is necessary that the ruling or interpretation of the legal provisions should be issued by the CBDT in consultation with the Ministry of Law and should be in the public domain for compliance by the taxpayers as per the practice followed in the past. That may reduce tax litigation in a more effective manner than by the DRC or by getting a ruling from the proposed Board for Advance Rulings.

