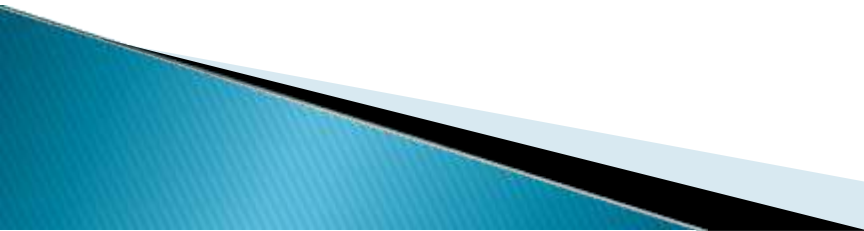


**Maharashtra
Amnesty
Scheme
2019**

**BY CA MAYUR
ZANWAR**

Amnesty Scheme–Relevant Notifications

- ▶ The Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019– Notified by Maharashtra Ordinance No. V OF 2019 dated 6th March 2019 Published in Official Gazette Part VIII.
 - ▶ Order No. MMB–2019/1/ADM–8 dated 07/03/2019 for specifying forms and manner of submission of forms.
 - ▶ Notification No. Sett/MMB–2019/1/ADM–8.dated the 7th March 2019 for notifying transactions that may constitute an Issues.
 - ▶ Trade Circular No.9T of 2019 dated 08/03/2019.
- 

BACKGROUND

- ▶ Prior to the implementation of GST in the State various tax laws were in force, some of the tax laws have been repealed and subsumed in the Goods and Services Tax.
- ▶ Substantial amount of tax is locked due to large number of cases and litigations which are pending under the repealed laws upto 30th June 2017. The State Government considered it necessary and hence introduced the scheme for settlement of arrears of tax, interest, penalty or late fee hereinafter referred to as 'Maharashtra Amnesty Scheme 2019.

Duration of Scheme

- ▶ Duration of Scheme is in two phases
 - Phase I 01/04/2019 to 30/06/2019
 - Phase II 01/07/2019 to 31/07/2019
- ▶ Payment and applications both to be made during these periods.
- ▶ The specified period is divided in two parts periods up to 31/03/2010 and periods thereafter up to 30th June 2017.

Applicable Acts

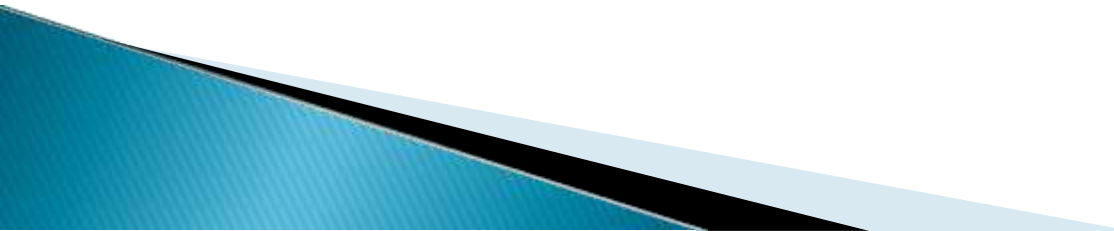
- ▶ Amnesty scheme inter-alia covers the following key legislations
 - a) Bombay Sales Tax Act, 1959.
 - b) Maharashtra Value Added Tax Act, 2002.
 - c) Central Sales Tax Act, 1956.
 - d) Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002.
 - e) Maharashtra Tax on Luxuries Act, 1987.
 - f) Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975.

APPLICABILITY

The Scheme makes a clear distinction between disputed tax and undisputed tax. The benefit under the Scheme is available only for disputed tax. Some of the typical issues faced by companies and for which application for settlement can be filed are listed hereunder:

- ▶ Pending CST declaration forms (C Form, F Form, E-I/E-II Forms, etc.)
- ▶ Mismatch of MVAT credit in Form J1 and J2 (Details of the credit availed with details uploaded by vendor)
- ▶ Disputes in relation to eligibility of input tax credit.
- ▶ Disputes relating to applicability of tax on particular transactions (e.g. Software, leasing of goods, works contract, etc.)

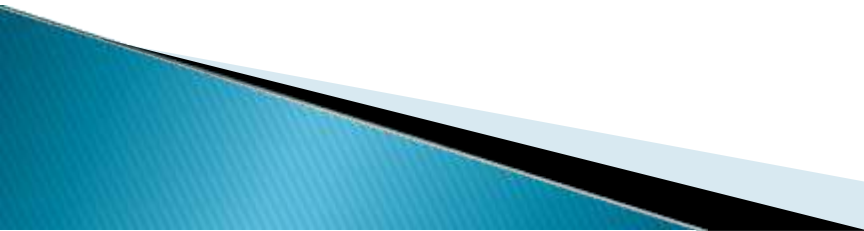
APPLICABILITY

- ▶ Tax liability identified by auditor in Form 704 (VAT Audit report) but not accepted by the Company.
 - ▶ Dispute relating to exemption claimed on any transactions (High-seas sale, etc.) and relating to classification of products under MVAT law.
 - ▶ Issues in relation to pre-determined sales.
- 

Amnesty for Partial Issue

- ▶ Amnesty can be availed for certain issues involved in any appeal filed against the order.
- ▶ It is not necessary to avail amnesty for full amount of tax payable as per order .
- ▶ However, when tax and interest and penalty is payable then amnesty can not be availed only for interest and penalty amount.
- ▶ The Commissioner by Notification, dated 07/03/2019 has notified following issue for partial amnesty;-
 - ▶ -Tax payable for pending forms like C,F, H, E-I or
 - ▶ E-II or I which are defective, partly received or not received,
 - ▶ - Disallowance of set off due to purchases made from non genuine dealers, non filing of returns by vendor, purchase of goods from composition dealer, mis-match of set off, mistake in calculation of setoff, denial of set off , retention of set off.

Amnesty for Partial Issue

- ▶ Tax payable for disallowance of any claim or application of wrong rate of tax, or certain income treated as taxable.
 - ▶ The applicant dealer will have to state the issue for which he is applying for amnesty and issues for which he is continuing appeal in application for withdrawal of appeal in form IA.
 - ▶ It seems from the notification for any issue than notified, the amnesty can not be applied partially like suppression of sales etc.
 - ▶ The notification should cover residuary clause any other reason.
 - ▶ No provision is made to allocate any payment made in appeal for issues continued on the line of earlier amnesty to allocate it proportionately and also to determine sum eligible for amnesty and waiver thereof.
- 

NON APPLICABILITY

- ▶ Cases where statutory orders or returns or the revised returns under the erstwhile law are filed after 15 July 2019.
- ▶ Remand back cases where the order has not been passed on or before 15 July 2019.
- ▶ Credit transitioned to the GST regime unless the credit equivalent to the amount for which the settlement application is filed has been reversed by debiting electronic credit/cash ledger on or before the filing of the application.
- ▶

QUANTUM OF WAIVER

- ▶ The benefits under the Scheme is divided into two tax periods and the application can be made in either of the two phases. However, higher benefits are granted if the application is made under phase I. The benefits provided under the Scheme are tabulated hereunder

QUANTUM OF WAIVER

Dispute period	Nature of liability	Phase I 01 April 19 – 30 June 19		Phase II 01 July 19 – 31 July 19	
		Payment	Waiver	Payment	Waiver
Period Up to Mar ³¹ ch 2 2010	Tax	50%	50%	60%	40%
	Interest	10%	90%	20%	80%
	Penalty	5%	95%	10%	90%
Period from 01 April 2010 to 30 June 2017	Tax	70%	30%	80%	20%
	Interest	20%	80%	30%	70%
	Penalty	10%	90%	20%	80%

ILLUSTRATION

- ▶ Higher rate of tax charged in assessment.

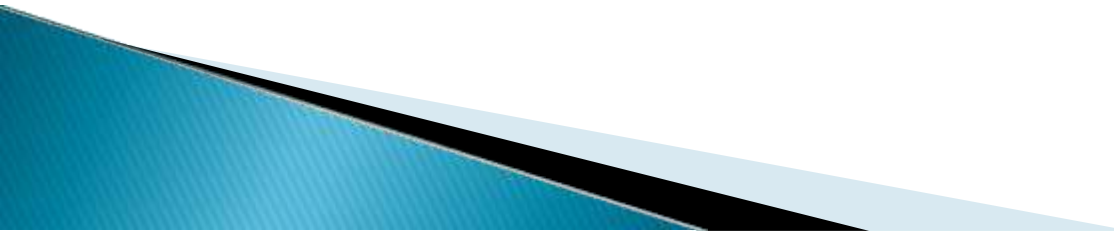
Particulars	As per Returns	As per Assessment Order	
		Type 1	Type 2
GTO of Sales	2,00,000	2,00,000	2,00,000
Less:			
Deduction for Labour/Other charges	50,000	-	-
Tax Deduction u/r 57	16,667	16,667	22,222
Net Turnover of Sales	1,33,333	1,83,333	1,77,777
Tax payable@12.5%	16,667	22,917	22,222
Incremental Tax		6,250	5,555
Disputed/Undisputed		Disputed	Undisputed

ILLUSTRATION

- ▶ Higher Rate of Tax charged in Assessment.

Particulars	As per Returns	As per Assessment Order	
		Type 1	Type 2
GTO of Sales	2,00,000	2,00,000	2,00,000
Less:			
Tax Deduction u/r 57	9,524	9,524	22,222
Net Turnover of Sales	1,90,476	1,90,476	1,77,777
Tax payable@5%	9,524		
Tax payable@12.5%		23,810	22,222
Incremental Tax		14,286	12,698
Disputed/Undisputed		Disputed	Undisputed

CONDITIONS FOR AVAILING BENEFIT UNDER AMNESTY SCHEME

- ▶ Payment of requisite amount and filing of application– One of the precondition to file an application under the Scheme is payment of undisputed amount of tax and the amount of disputed tax, interest, penalty, late fee determined as per the Scheme.
 - ▶ Partial withdrawal of pending appeal– In cases where the matter is in appeal stage, one of the pre-condition for filing an application for settlement is that the applicant must withdraw the appeal unconditionally.
 - ▶ One of the important relaxation, is that the appeal can be withdrawn partially.
- 

CONDITIONS FOR AVAILING BENEFIT UNDER AMNESTY SCHEME

- ▶ Adjustment of payment made before 31 March 2019– Under the Scheme the benefit of waiver will be calculated on the amount remaining outstanding after adjustment of payment made before 31 March 2019. Therefore, any payment made as pre-deposit, amount paid under protest, etc. will also be adjusted against the liability and the waiver will be calculated on the balance amount. It is noteworthy that, in some cases (like pending declaration forms) pre-deposit is as high as 100%. Hence in such cases, there will not be any benefit on the tax amount, however, the benefit will be available for interest and penalty amount.
- ▶ Cases where assessments are not complete – Benefits under the Scheme can be claimed even in cases where assessment is not yet complete. The assessee can suo moto assess the liability and file an application under the Scheme.

CLASSIFICATION OF ISSUES

Out of the various issues arising in determining the correct tax liability of the assessee, some of the issues mentioned herein below are identified as Disputed Tax/Un-disputed tax :

Sr. No.	Issues	Disputed Tax/ Un-disputed Tax
1	Taxes Collected separately in the tax invoice	Un-disputed
2	Deductions allowed in the statutory order for the taxes collected separately	Un-disputed
3	Taxes shown payable in the return or the revised return	Un-disputed
4	Excess tax collection shown in Return/Revised return/Audit report	Un-disputed

CLASSIFICATION OF ISSUES

5	Taxes not collected separately in the invoices and claimed by the dealer as deductions or allowed by the authority as per rule 57 of the MVAT Rules or similar rules made under other relevant act	Un-disputed
6	Amount forfeited under a Statutory Order	Un-disputed
7	Tax, interest or late fee recommended by the auditor to the extent it is accepted by the dealer.	Un-disputed
8	Tax deducted at source (TDS) by the employer	Un-disputed
9	Tax collection (TCS) made under section 31A of the Value Added Tax Act	Un-disputed
10	Sales Turnover not disclosed in return/Revised return/Audit report but tax is collected separately in tax invoices	Un-disputed

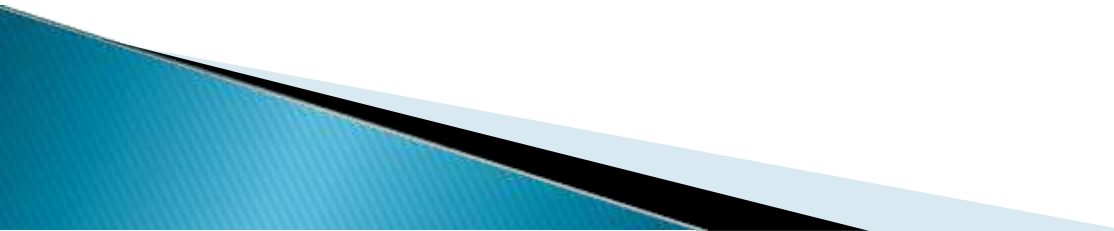
CLASSIFICATION OF ISSUES

11	Disallowance of ITC due to Mis-match, Un-match, Non-filer, Short filer	Disputed
12	Disallowance of ITC due to purchases from non-genuine dealer/Unregistered dealer	Disputed
13	Disallowance of ITC due to purchases from the composition dealer under MVAT Act who has paid lumpsum payment in lieu of Tax.	Disputed
14	Error in computation of set-off or retention of set-off as per statutory order.	Disputed
15	Self-determination of error in computation of set-off or retention of set-off .	Disputed
16	Self determination of estimated additional tax liability due to any deduction claimed from sales turnover by the applicant.	Disputed

CLASSIFICATION OF ISSUES

17	Disallowance of any deduction claimed from sales turnover by the applicant as per statutory order.	Disputed
18	Wrong rate of tax in respect of any transaction of sales .	Disputed
19	Income receipts treated as taxable sales.	Disputed
20	Demand as per statutory order due to non production of declaration forms/certificates.	Disputed
21	Demand as per statutory order due to production of defective declaration forms/certificates.	Disputed
22	Self determination of estimated additional tax liability due to non production/defective declaration forms/certificates.	Disputed

CONCLUSION

- ▶ The Amnesty Scheme 2019 provides very good incentive in the form of partial waiver of tax, interest, penalty or the late fee and is one of the most lucrative Amnesty scheme. Hence it is very important for the businesses to evaluate the arrears of tax / pending disputes and avail the benefit under the Scheme and move forward to work more efficiently in GST Era.
- 

THANK YOU!

