

Maharashtra Amnesty Scheme, 2019

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The Amnesty Scheme 2019

- ▶ "Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019" ['*Amnesty Scheme*']
- ▶ Comes into force w.e.f. 06-03-2019
- ▶ consists of 20 Sections
- ▶ Annexure 'A' and Annexure 'B'
- ▶ It is a separate piece of enactment
 - ▶ having definitions, modalities, rules and powers.

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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.

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Applicability of the scheme - Relevant Acts

- ▶ Scheme is applicable in respect of arrears of tax, interest, penalty or late fee under various relevant acts as specified below for the period up to 30th June 2017
- ▶ Central Sales Tax Act, 1956
- ▶ Bombay Sales of Motor Spirit Taxation Act, 1958
- ▶ Bombay Sales Tax Act, 1959
- ▶ Maharashtra Purchase Tax on Sugarcane Act, 1962
- ▶ Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975
- ▶ Maharashtra Sales Tax on the Transfer of Right to use any Goods for any purpose Act, 1985

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Applicability of the scheme (contd..)

- ▶ Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987
- ▶ Maharashtra Tax on Luxuries Act, 1987
- ▶ Maharashtra Sales Tax on the Transfer of Property in Goods involved in Execution of Works Contract (Re-enacted) Act, 1989
- ▶ Maharashtra Tax on the Entry of Goods into Local Areas Act 2002,
- ▶ Maharashtra Value Added Tax Act, 2002
- ▶ Also includes rules made or notifications issued thereunder.

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Who can take benefits of scheme

- ▶ The tax payer whose registration is continued after 1st July 2017.
- ▶ The tax payer whose registration certificate under relevant act was valid at any time on or before the 30th June 2017.
- ▶ The tax payer whose registration certificate is cancelled at any time on or before the date of commencement of this ordinance.
- ▶ The tax payer who were never registered under any of the Relevant Act, but desire to avail the benefits under this ordinance.
- ▶ Such application may be preferred irrespective of the fact as to whether the benefits under any of the Earlier Amnesty Scheme or under the Maharashtra Settlement of Arrears in Disputes Act, 2016 [Section 6]

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Time limit for submission of application

Sr. No	Particulars	First Phase	Second Phase
(1)	Time limit for payment of the requisite amount.	From 1 st April 2019 to 30 th June 2019	From 1 st July 2019 to 31 st July 2019
(2)	Duration for submission of application.	From 1 st April 2019 to 30 th June 2019	From 1 st July 2019 to 31 st July 2019

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Duration and Benefits under the Scheme

1	Particular	Annexure-A & B				Annexure-A & B			
		FIRST PHASE				SECOND PHASE			
2	Phase(s)	1st April 2019 to 30th June 2019				1st July 2019 to 31st July 2019			
3	Duration of the Phase	Upto 31st March 2010		1st April 2010 to 30th June 2017		Upto 31st March 2010		1st April 2010 to 30th June 2017	
4	Period of the Scheme	Amount to be paid	Amount to be waived	Amount to be paid	Amount to be waived	Amount to be paid	Amount to be waived	Amount to be paid	Amount to be waived
5	Payment and waiver								
6	Un-disputed tax amount	100%	0%	100%	0%	100%	0%	100%	0%
7	Disputed tax amount	50%	50%	70%	30%	60%	40%	80%	20%
8	Amount of interest payable as per any statutory order or returns or revised returns	10%	90%	20%	80%	20%	80%	30%	70%
9	Outstanding penalty amount as per any statutory order	5%	95%	10%	90%	10%	90%	20%	80%
10	Amount of Post Assessment Interest or Penalty or both leviable but not levied upto the date of application by the dealer under the Relevant Act	0%	100%	0%	100%	0%	100%	0%	100%
11	Late fee payable in respect of returns filed during the period commencing from 1st April 2019 to 31st July 2019	0%	100%	0%	100%	0%	100%	0%	100%

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Important Definitions

- ▶ Arrears of Tax, Interest, Penalty or Late fee [Section 2(1)(c)]
 - ▶ Payable by an assessee as per any **statutory order** under the Relevant Act;
 - ▶ Admitted in the return or, as the case may be, the **revised return** filed under the Relevant Act and which has not been paid either wholly or partly;
 - ▶ **Determined and recommended to be payable by the auditor**, in the **audit report** as per section 61 of the Value Added Tax Act, and **accepted by the assessee either wholly or partly**, whether the notice under section 32 or 32A of the Value Added Tax Act has been issued or not;
 - ▶ In respect of which **notice** has been issued, in relation to any proceeding under the Relevant Act;
 - ▶ **Determined to be payable by the assessee** where no notice in relation to any proceeding under the Relevant Act is issued;

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Important Definitions (contd..)

- ▶ Disputed Tax and Undisputed Tax [Section 2(1)(g) and 2(1)(q)]
 - ▶ **Disputed tax** means the tax other than un-disputed tax
 - ▶ **Un disputed tax** means,-
 - i. The taxes collected separately under the Relevant Act; or
 - ii. The deductions allowed by the authorities in the statutory order for the taxes collected separately under the Relevant Act; or
 - iii. The taxes shown payable in the return or the revised return under the Relevant Act; or
 - iv. An amount claimed by the dealer as deductions or allowed by the designated authority as per Rule 57 of the VAT Rules or similar rules made under other Relevant Act; or
 - v. An amount forfeited under the statutory order or excess tax collection shown in the return, revised return or, Audit report, as the case may be, submitted under the Relevant Act; or
 - vi. Any amount of tax, interest or late fee determined and recommended to be payable by the auditor, in the audit report submitted as per section 61 of the VAT Act, and accepted by the assessee either wholly or partly; or
 - vii. The tax deducted at source [TDS] by the employer under the Relevant Act; or
 - viii. the tax collection [TCS] made under section 31A of the VAT act;

Note : These definitions are restricted to the arrears of Tax portion only except point (vi) as above

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Examples of disputed dues

Sr.No	Issues	Disputed Tax
1.	Disallowance of ITC due to Mis match, Un match, Non filer, short filer	Disputed
2.	Disallowance of ITC due to purchase from non genuine dealer/ Unregistered dealer	Disputed
3.	Disallowance of ITC due to purchase from the composition dealer	Disputed
4.	Error in computation of set off or retention of set off as per statutory order	Disputed
5.	Self determination of error in computation of set off or retention of setoff	Disputed
6.	Disallowance of any deduction claimed from sales turnover by the applicant	Disputed
7.	Self determination of estimated additional tax liability due to any deduction claimed from sales turnover by the applicant	Disputed
8.	Wrong rate of tax in respect of any transactions of sales	Disputed
9.	Income receipts treated as taxable sales	Disputed
10.	Demand as per statutory order due to Non production of defective declaration forms/certificates	Disputed
11.	Demand as per statutory order due to production of defective declaration forms/certificates	Disputed
12.	Self determination of estimated additional tax liability due to Non production / defective declaration forms/certificates	Disputed

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Important Definitions (contd..)

► Requisite amount [Section 2(1)(i)]

- The term "requisite amount" means "an amount required to be paid during First phase or, as the case may be, the second phase under this Ordinance and shall be the aggregate of the following amount paid during the said Phases under this Ordinance towards,-
 - i. Un disputed amount of tax, and
 - ii. The amount of disputed tax, interest, penalty, late fee, post assessment penalty or post assessment interest whether levied or not,
 as determined under section 10 of the Ordinance and as specified in Annexure A or Annexure B appended to the Ordinance

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Adjustment of any payment made

- ▶ Notwithstanding anything contained in the Relevant Act or under this Ordinance,-
 - ▶ Any payment made in respect of the statutory order either in the appeal or otherwise, on or before the 31st March 2019, shall first be adjusted towards the amount of tax and thereafter towards the interest and the balance amount remaining unadjusted, shall then be adjusted towards the penalty and the late fee, sequentially
 - ▶ After adjustment of amount as specified above, the amount remaining outstanding as on 1st April 2019 shall only be considered for the settlement.
 - ▶ No arrears of tax, interest, penalty, or late fee, if any shall be settled under the ordinance, in case the statutory orders are made or returns or the revised returns are filed after the 15th July, 2019

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Adjustment of any payment made - Example

- ▶ Adjustment of the payment under the Ordinance is contrary to the provisions of section 40 of the MVAT Act
- ▶ Under MVAT Act any payment shall first be adjusted towards the interest, penalty and lastly towards the tax [e.g. made after passing of the order]
- ▶ Assessment dues have arisen - Tax - 3,00,000 Interest - 50,000 Penalty - 10,000
 - ▶ If the assessee has made part payment after the order in following break up
 - ▶ Tax - 1,00,000 Interest - 20,000 Penalty - 10,000
 - ▶ In the above scenario entire payment of Rs.1,30,000 Will be adjusted first against Tax as per Sec 5 of Ordinance

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Conditions for settlement

- ▶ A separate application shall be made for each class of arrears specified in sec 2(1)(c).
- ▶ Online Application - to designated authority in the prescribed Form I for amnesty as per order and Form IA for others along with prescribed documents (e.g. Order copies and payment challan copies).
- ▶ The proof of payment of the requisite amount- in MTR 6 Challan.
 - ▶ To make payment as per application or any defect notice within period of amnesty.
- ▶ If payment is made in first phase and application is made in second phase then it will be considered to be made in second phase and to make short fall in payment as per second phase within second phase.
- ▶ Where an applicant desires to settle the arrears of return in respect of a specified period, a separate application shall be made for each such return or revised return.
 - ▶ Provided where an application to settle dues under any return pertains to a **single financial year** then he can make one single application

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Conditions for settlement (contd..)

- ▶ No application shall be made for a Revised return made after 6th March 2019 which results in a reduction of tax or interest of both admitted, including due to adjustment of set-off.
 - ▶ However, this condition does not apply if the reduction is due to the payment of tax or interest by cash and the same was declared under revised return.
- ▶ There will be no waiver in respect of the undisputed tax.
- ▶ Tran 1 credit of Vat refund
 - ▶ Where Vat refund claimed in Tran 1 and dealer wants to obtain amnesty benefit
 - ▶ No application shall be made who has taken credit in the electronic credit ledger
 - ▶ unless the credit equivalent to the amount for which the settlement application is made is reversed by debiting the electronic ledger on or before the date of submission of an application for settlement.

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Conditions for settlement (contd..)

- ▶ Any appeal pending before the appellate, or the tribunal or the Court
 - ▶ shall be **withdrawn unconditionally** by the applicant in Form II.
 - ▶ **Partial withdrawal of appeal also allowed**
 - ▶ Form II currently need to apply manually since online process not yet started
 - ▶ Said Application for withdrawal of appeal should be submitted to the appellate authorities and proof thereof to be attached with application.

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Opting amnesty partially

- ▶ 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, mismatch of set off, mistake in calculation of setoff, denial of set off , retention of set off ,**
 - ▶ Tax payable for disallowance of any claim or application of wrong rate of tax, or certain income treated as taxable.

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Forms to be used for Application for settlement

Sr.No	Form No	Purpose of Form
1	Form - I	Application for settlement of arrears of tax, interest, penalty or late fee payable as per the statutory order
2	Form - IA	Application for settlement of arrears other than the statutory orders like return/revised return dues, dues as per recommendations in audit report or self assessed dues etc
3	Form - II	Application for withdrawal of appeal
4	Form - III	Notice of Defect in respect of application for settlement area
5	Form - IV	Order of settlement or Order of Rejection
6	Form - V	Notice for Rectification of Mistakes to be issued by the nodal officer
7	Form - VI	Application for Rectification of Mistakes to be submitted by applicant
8	Form - VII	Notice for review

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Verification of correctness and completeness of application

- ▶ Designated authority shall verify the correctness and completeness of application
- ▶ In case the said application is incorrect or incomplete or the requisite amount paid is deficient then designated authority will issue defect notice
- ▶ Shall issue defect notice within 15 days of receipt of application and can be issued only once
- ▶ The applicant shall within 15 days correct the defect and also make payment as pointed in defect notice
- ▶ Payment cannot be made post 31st July 2019

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Order of settlement, Rejection, Rectification & Review

- ▶ If the authority is satisfied with application, the order of settlement will be passed in Form IV
- ▶ If application is not in accordance with the provisions of ordinance Rejection order in Form IV can be passed, after giving reasonable opportunity of being heard
- ▶ Rectification by authority - time limit is 6 months from the date of service of order - notice in Form V must be issued by the authority
- ▶ Rectification by applicant - time limit is 6 months from the date of receipt of order - application in Form VI
- ▶ Review by the commissioner - Time limit is 12 months from the date of service of order of settlement - Notice in Form VII must be issued by the commissioner

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Powers of authorities under Relevant Act

- ▶ No proceeding shall continue under the Relevant Act with respect of the issues for which application for settlement is filed
- ▶ Proceeding under the Relevant Act shall continue:
 - ▶ To the extent of issue for which application for settlement is not filed.
 - ▶ In case order of rejection of settlement u/s 12(2) is passed
- ▶ Bar on reopening of settled cases under the Relevant Act:
 - ▶ Once the order of settlement is passed u/s 12(1) of ordinance, the matter shall not be reopened in any proceeding or review or any other proceedings under Relevant Act

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Revocation of order of settlement

- ▶ Settlement order u/s 12(1) can be revoked
 - ▶ If it is found in search & seizure under relevant act that, in cases of benefit of settlement is obtained:
 - ▶ By suppressing any material information
 - ▶ By furnishing incorrect or false information
 - ▶ By concealment of any particulars
 - ▶ Revocation can be done in 2 years from the end of F.Y in which order of settlement is served
 - ▶ Old proceedings gets revived and reinstated once the order of settlement is revoked

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No refund under settlement

- ▶ Under no circumstances, the applicant shall be entitled to get the refund of the amount paid under this Ordinance
- ▶ In case of revocation of an order of the settlement in accordance with the provisions of section 16, the amount paid by the applicant under the ordinance shall be treated to have been paid under the Relevant Act

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Issues under the scheme

1. CST appeal has been filed for disallowance of 'C' forms of Rs. Ten lakhs. Appeal is pending
 - I. 'C' Forms of Rs 4 lakhs received. The dealer wants to settle for balance six lakhs and wants to continue appeal for Rs.4 Lakhs
 - II. Dealer has paid entire tax amount of as per sec 26(6) while filing the appeal.
 - III. What is the benefit under amnesty scheme?
2. After receiving the appeal order dealer went to tribunal for aggrieved point. Now dealer have received review notice from department against the appeal order. Dealer has the apprehension for review notice and want to avail the amnesty benefit for that point can he avail the amnesty?
3. If a dealer pay disputed tax (70%) and recover 70% from the customer by a debit note, will the customer get set off in his assessment?

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Issues under the scheme

4. In a case where there were dues in one year, letters were written to the department to adjust the dues against refunds of other years. No orders have been passed by the department. Can a letter to be written to the department not to act upon those letters and go for amnesty scheme?
5. In a case where dealer registered under BST Act [but not registered either in MVAT or GST Acts] is in appeal for the year 1988-89 wants to opt amnesty.
 - ▶ How does is he make payment under amnesty? While making payment Old RC Number is required to be submitted along with PAN/TAN number.
 - ▶ Whether Old RC number and PAN/TAN are linked?
 - ▶ Whether such payment will be considered in company's name or personal name in case of a proprietor dealer?
 - ▶ What if the proprietor is dead?

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