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# Settlement Commission Handbook

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## 1 Preface



The Income Tax Settlement Commission (ITSC) has been in existence since 1-4-1976. 34 years have seen it grow from a single Bench with a Chairman and two Members to a well established entity with four functioning benches at New Delhi, Mumbai, Kolkata, and Chennai.

The Finance Act 2007 wrought some dramatic changes in the ITSC most significant being that it fixed the cut-off date for decision in all pending cases before the Settlement Commission at 31 March 2008. Suddenly the Settlement Commission was an Institution with a “...**Best By date ie 31-3-08** ” and we all waited for it to phase out. **But then the High Courts decided to revive the ITSC.** Delhi High Court vide its detailed order in the case of Vatika Farms (p) Ltd in case no 5462 of 2007 decided the issue of abatement of pending Settlement Cases, granting a stay, stating that proceedings before the Settlement Commission would not abate as on 31-3-2008. Other High Courts followed this decision.

But **what of the Departmental interests?** Since there is no reporting of pendency of ITSC cases, it is possible that there may be cases wherein the applicants will have taken advantage of this interregnum to slip into oblivion/ and the danger of proceedings having been already barred by time where there is no writ staying abatement.

Now Finance Act 2010 appears to have decided to give the ITSC a fresh lease of life. But again for how long? Unfortunately the Direct Taxes Code does not contain any provisions for “An Alternative Dispute Resolution Forum”. These issues then were the catalyst for the Seminar organized by the RTI Chandigarh.

**The Seminar threw up some very interesting issues and we submit these for the consideration of those who can take action on these to further the cause of reducing protracted litigation in an era where “*customer satisfaction*” has assumed a significant place in Departmental priority.**

RTI Chandigarh has thus put together not just the material relevant to Departmental Officers but also some reading material to provide an academic perspective for departmental officers. Settlement is a concept that works and has worked well in other countries too for example the Hansard procedure of confession in the UK IRS and the Compromise Procedure of the US IRS. The material on these is a pastiche from the internet- but it is hoped that **it will provide an overview of the “Spirit governing Settlement” in the words of the Wanchoo Committee, “compromise and settlement”**- to avoid protracted legislation and facilitate recovery of tax. This spirit is what drives the proceedings before any Settlement Commission. And as we do some streamlining we need to factor this spirit in as well.

In closing I must acknowledge the contribution of Mr B RSudhakar, Chairman ITSC, Mr. P.K. Dubey, Member, ITSC, and Mr. Sunil Chopra, CCIT (Central), New Delhi, as indeed all ITSC Officers who gave freely of their time and support to RTI Chandigarh to make this Seminar possible. Thanks are also due to CCIT(CCA) New Delhi Mrs Meenakshi Singh and DGIT (Systems) Mrs Lakshmi Prasad and their Officers for their infrastructural support for the Seminar. RTI Chandigarh is able to function in New Delhi only due to the generous support we receive from the local Officers and staff to whom we are truly indebted.

**GG Shukla**

Director General (NADT),  
Nagpur



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## 1.1 Wanchoo Committee Report and its Vision for the Creation of the Income Tax Settlement Commission

Income-Tax Settlement Commission/ Wealth-tax Settlement Commission was set up under section 245B of Income-tax Act 1961/ Section 22B Wealth-tax Act 1957, respectively , w.e.f. 1.4.1976 with its headquarters at New Delhi. It is a quasi-judicial body. It has been set up as a result of recommendations made by Direct Taxes Enquiry Committee (Popularly known as Wanchoo Committee). The recommendations for setting up of the Settlement Commission was made by the Wanchoo Committee in Chapter 2, entitled “Black money and tax evasion”, Paragraphs 32 to 34 of its reports. While recommending this the Committee had the occasion to observe as under:

***“In the administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax-evader or an unintending defaulter from making a clean breast of his affairs, but would also unnecessarily strain the investigational resources of the Department in case of doubtful benefit to revenue, while needlessly proliferating litigation and holding up collections. We would, therefore, suggest that there should be a provision in the law for a settlement with the taxpayer at any stage of the proceedings.*”**

Based on the above recommendations the Settlement Commission was set up for settling across the board, tax liabilities in complicated cases with doubtful benefit to revenue and thereby ensure a mechanism to avoid protracted and endless litigation and save avoidable strain on investigational resources of the Income-tax Department.

To see that these objectives are optimally fulfilled, the Commission comprises of Members who are persons of integrity and outstanding ability, having special knowledge of and experience in, problems relating to Direct Taxes and business accounts. Originally the Commission consisted of a Chairman and two other Members. However, w.e.f. 10-09-1986 it consists of a Chairman and as many Vice-Chairmen and Members as the Central Government thinks fit. The change has been made to augment strength of the Commission to facilitate quicker disposal of cases and to liquidate arrears of pending cases. The jurisdiction, powers and authority of the Commission are exercised by its Benches which will ordinarily be presided over by the Chairman or one of the Vice –Chairmen. The Bench for which the Chairman is the presiding officer is the Principal Bench and the other Benches are known as the Additional Benches.

1.4 Four Benches of the Commission are functioning. The Delhi Bench is known as the Principal Bench. The other Benches are functioning at Mumbai, Chennai, Kolkata and these are known as the Additional Benches.

## 1.2 Whither Settlement? -An Overview of the significant Issues

The interaction at the Seminar were animated to say the least. All participants were unanimous that if one had to review the efficacy of the ITSC as an alternative Forum for Dispute Resolution, it will necessarily have to be in terms of the vision with which it was set up—ie cutting down on protracted litigation and expeditious recovery of taxes.

At the Seminar we polled the participants mainly Central Charge Officers or those with pendency of ITSC cases and found that they were all agreed that the success or failure of a good assessment (search or otherwise) is tested by the taxes paid. They also agreed that although no statistical study had been carried out, it was beyond doubt that the proceedings before the ITSC did have a more satisfying outcome departmentally than the regular channels of appeal purely in terms of taxes paid. But ITSC Benches are still carrying the pendency of applications received in the early nineties—so perhaps there exists a need for some introspection and some streamlining of the liaison between field officers and the Settlement Commission.

### 1. **Reconciling the Pendency as per C'sIT's with that as per ITSC for expeditious disposal**

It emerged that there were considerable differences in pendency as per ITSC and that as per C'sIT's. The indicative list placed in this Handbook showing CIT wise pendency shows a pendency of 240 odd for CIT (C) Ludhiana whereas CIT(C ) Ludhiana has a pendency of 600+ cases. If this is the variation for just one CIT(C ) the need for reconciling the pendency cannot be more critical given that these are all mainly high income Search cases. Reconciliation is also critical to facilitate monitoring of expeditious disposal by ITSC.

It was also discussed that there is no reporting of, cases pending before the ITSC, in any Report such as MPR etc consequently there is no feedback to the government regarding the pendency of cases and more importantly the Revenue locked up in these proceedings. The pendency of cases assumes importance especially in view of the amendments introduced by Finance act 2007 fixing the cut-off date for decision in all pending cases before the Settlement Commission at 31 March 2008. High Courts have decided the issue of abatement of pending Settlement Cases granting a stay, stating that proceedings before the Settlement Commission would not abate as on 31-3-2008. But since there is no reporting of pendency of ITSC cases, it is possible that there may be cases wherein the applicants have not obtained a stay, and have taken advantage of this interregnum to slip into oblivion/ and the danger of proceedings having been barred by time.

It was thus the consensus of all present that all CIT's check pendency of cases prior to 2007 to see whether there is a High court order of stay, in those cases, else the proceedings have abated before the Settlement Commission and if no order has been



passed by March 2009, the case has been barred by time and thus logically may need to be taken off pendency.

## 2. Regarding Monitoring the Disposal of actual pendency

This Handbook has a **Draft Format** to facilitate monitoring of ITSC Pendency for facilitating quick disposal by Chief Commissioners in terms of the vision for settlement envisaged by the Wanchoo Commission. It also suggests **quarterly meetings** between field officers and ITSC DR's and DI(inv) for smoothing glitches so as to facilitate speedy disposal leading to recovery of taxes.

## 3 Alternative Dispute Resolution in DTC 2010- provision for continuity or sunset clauses atleast.

Also what happens after the introduction of the DTC? Will we allow High Courts to adjudicate these issues too as in the case of abatement or take steps ourselves?

At the very least there should be **sunset clauses** in the DTC for the phasing out of the ITSC before whom a large pendency exists which has yet to be verified.

## 4. Correcting the Inequity in Statutory Drafting due to frequent changes in the Law

After introduction of time in which ITSC shall pass an order u/s 245D(4) as laid down u/s 245D(4A), there are effectively three categories of cases:

S No	Category of Case	Time in which ITSC shall pass an order u/s 245D(4) as laid down u/s 245D(4A)
1	Applications filed before ITSC prior to 1st June 2007	Either abated or in case of writ staying abatement, no time limit prescribed.
2	Applications filed before ITSC after 1 <sup>st</sup> June 2007 and before 1 <sup>st</sup> June 2010	12 months
3	Applications filed before ITSC after 1 <sup>st</sup> June 2010	18 months

In the scenario as tabulated above, a situation arises wherein cases at Sno 2 and 3 above, where applications were made before those at Sno-1, will be decided **before** cases at S no 1 which is against all canons of equity and justice in taxation. **The Department needs to take suo-moto notice of this inequitable state of affairs and correct it through appropriate legislation.**

## 5. Regarding Amendments required to be made in the Settlement Commission (Procedure) Rules 1997 and Office Procedure Manual

Following amendments introduced by the Finance Acts 2007 and 2010, certain changes are required in the ITSC (Procedure) Rules 1997 and on similar lines updating changes are required to be made in the Office Procedure Manual 2003.

### 1.3 Record of Proceedings of Seminar on Settlement



#### **Proceedings of Seminar on Settlement Commission**

**Date: 15.06.2010**

**Venue:**

**Main Conference Hall, Jhandewala Building,  
New Delhi.**

## **2 Regarding Proceedings of The “Seminar On Settlement Commission And Its Role As An Alternative Dispute Resolution Forum”**

### **2.1 Resource Persons**

1. Mr. B.R. Sudhakara Chairman, Settlement Commission
2. Mr. P.K. Dubey, Member, Settlement Commission
3. Mr. Sunil Chopra, CCIT (Central), New Delhi.
4. Padamshri Mr. T.N. Manoharan, C.A.
5. Sh. Navneet Soni, DIT(Inv).
6. Shri Jayant Diddi, CIT(DR)-I, Settlement Commission.
7. Mrs. Amarpali Dass, CIT (DR)-II, Settlement Commission.
8. Ramesh Chander, Addl. DIT (Inv.)
9. Shantanu Dhamija, Addl. DIT (Inv.)
10. Rajesh Jha, Addl. DIT (Inv.)

### **2.2 Esteemed Guests from Jhandewalan**

1. Mr. Sharma, DGIT (Investigation), New Delhi
2. Ms. Sailo, DGIT (Intelligence), New Delhi
3. Ms. Laxmi Prasad, DGIT(Systems) New Delhi (Out of station)
4. Mr. M.P. Varshney, DGIT(BPR), New Delhi (Out of Station)

### **2.3 Schedule of Seminar**

A copy of the schedule is placed at **Annexure-I** to this ‘Record of proceedings’.

### **2.4 List of Participants**

List of participants is placed at **Annexure-II** to this ‘Record of proceedings’.

### **2.5 Record of Discussions and Issues emerging from the Seminar:**

The Seminar commenced with an overview of the ‘RTI Discussion Paper’, which was placed before the participants for their perusal, discussion and feedback. The issues covered herein have been included in the following record of proceedings hereunder.

### **2.5.1 Reconciling the Actual CIT wise Pendency of Cases and Quantifying the Revenue locked up in Settlement Proceedings**

Indicative List of CIT wise Pendency had been obtained by RTI from the Income Tax Settlement Commission, New Delhi and was placed in the Booklet provided to all participants. All CIT's were requested to kindly point out whether the pendency reflected therein was as per their record of pendency. It emerged that there were considerable differences in pendency as per ITSC and that as per C'sIT's. This brought up one of the issues in the RTI discussion paper regarding the need for reporting, and reconciling the pendency to facilitate monitoring of expeditious disposal by ITSC.

- It was discussed that there is no reporting of, cases pending before the ITSC, in any Report such as MPR etc
- The only reporting is regarding the cases where demand was raised and assessment order passed which appears in Column Demand Difficult to collect in Column 9 of CAP-1
- Consequently there is no feedback to the government regarding
  - The pendency of cases and
  - More importantly the Revenue (say Concealment detected as per Appraisal Report) locked up in these proceedings. (Usually Rule 9 Report quantifies the concealment.)
- The pendency of cases assumes importance especially in view of the amendments introduced by Finance act 2007 fixing the cut-off date for decision in all pending cases before the Settlement Commission at 31 March 2008. Delhi High Court vide its detailed order in the case of Vatika Farms (p) Ltd in case no 5462 of 2007 has decided the issue of abatement of pending Settlement Cases granting a stay, stating that proceedings before the Settlement Commission would not abate as on 31-3-2008. Other High Courts are following this decision.
- But since there is no reporting of pendency of Settlement cases, it is possible that there may be cases wherein the applicants have not obtained a stay, and have taken advantage of this interregnum to slip into oblivion/ and the danger of proceedings having been barred by time.

Mr B.R. Sudhakar Chairman ITSC spoke about the initiative taken by the Commission to scrutinize the pendency of old cases and sort these on the basis of date of application and welcomed the CIT's to contact the Secretary ITSC for effecting a reconciliation of pendency of cases. It was thus the consensus of all present that all CIT's check pendency of cases prior to 2007 to see whether there is a High court

order of stay else the proceedings have abated before the Settlement Commission and if no order has been passed by March 2009, the case has been barred by time and thus logically may need to be taken off pendency.

## 2.5.2 Regarding Monitoring the Pendency of cases for Expeditious Settlement

Regarding whether there needs to be an insertion for monitoring the pendency of ITSC Cases and revenue locked therein by CBDT in the existing Action Plan/ MPR to facilitate speedy disposal of cases by the Settlement Commission and assure C'sIT's of credit in work done, there was no consensus at the Seminar.

The Chief Commissioner (Central) however perceived that the format put forth by the RTI discussion paper could serve as a useful MIS for monitoring the cases pending before ITSC and also ensure that the work done in this regard by various CIT's was given due credit.

## 2.5.3 Draft Format Suggested for Monitoring Pendency

The suggested format for monitoring disposal of work pertaining to Settlement Commission was as under :

	Sr. No.	Name of the Assessee	Block Period/ A.Y.	Quantum of Concealment	Date of Application in Settlement Commission	First stage Report by CIT Date of Receipt of requisition from SC	Whether First Stage Report Sent within 30 days	Second Stage Report Date of Receipt of requisition of second stage report Under Rule 9 of Settlement Commission Rule, 1997	Whether Second stage report sent within 90 days	Whether Any stay obtained against abatement u/s 245HA	What is the fate of proceedings, if no stay obtained against abatement u/s 245HA	Status of Proceeding as on date	Remarks
	1	2	3		4	5	5A	6	6A	7	8	9	10
Total Pendency													

### Action to be Taken

Submitted for consideration of :

1. Honble Member(R) for consideration of issuance of suitable circular in this regard to ensure consistency and uniformity in the matter of action to be taken for pendency countrywide.
2. Member Settlement Commission for information.
3. CCIT (CCA), New Delhi and all Delhi Charge CCIT's with CIT's having Pendency in the Settlement Commission.
4. CCIT (CCA), Chandigarh and all NWR Charge CCIT's for further dissemination to CIT's having Pendency in the Settlement Commission.

5. CCIT (Central Charge), New Delhi for dissemination to Central Charge CIT's New Delhi
6. DGIT(Inv.), Chandigarh for dissemination to Central Charge CIT's NWR.

## 2.6 Time frame for Settlement Commission Cases

After introduction of time in which ITSC shall pass an order u/s 245D(4) as laid down u/s 245D(4A), there are effectively three categories of cases:

S No	Category of Case	Time in which ITSC shall pass an order u/s 245D(4) as laid down u/s 245D(4A)
1	Applications filed before ITSC prior to 1st June 2007	No time in case of writ staying abatement
2	Applications filed before ITSC after 1 <sup>st</sup> June 2007 and before 1 <sup>st</sup> June 2010	12 months
3	Applications filed before ITSC after 1 <sup>st</sup> June 2010	18 months

In the scenario as exists as tabulated above, a situation arises wherein cases at Sno 2 and 3 above, where applications were made before those at Sno-1, will be decided **before** cases at S no 1 which is against all canons of equity and justice in taxation. **The Department needs to take suo-moto notice of this strange state of affairs and correct it through appropriate legislation.**

This RTI discussion paper tabulated the days taken at every stage of the movement of an application before the Settlement Commission. The total time as per Statute was specified to show actual days available for Settlement Commission to sort out the cases and suggestions were made for revised time frame for consideration of the Hon'ble CBDT.

The House considered whether there was requirement for a change in the statutory time limit for passing the orders by the Settlement Commission. The house also discussed

- The reason why CIT's need to adhere to time limits prescribed for sending Reports
- Whether there was a need for change in the statutory limits laid down for furnishing reports.
- Whether there was a need for change in the statutory limits laid down for passing of orders by the Settlement Commission.



S No	Stages	Time	Cumulative Time	Remarks	Suggestions For revised time frame
1	Application	T (Where T is date of receipt)	Receipt	Under proviso 245 D(1) application deemed to be allowed after 14 days of application	
2	Notice to Applicant	T + 6 days (Within 7 days of receipt)	7 days		15 working days
3	Order u/s 245D (1) (reject or allow to be proceeded)	T + 13 days (within 14 days of receipt)	14 days		30 working days
4	<b>Validity Stage</b> Sending of Form 34B (without Annexures and enclosures) + order u/s 245 D(1)	T +29 days (Within 30 days of application)	30 days		
5	<b>First stage Report</b> by CIT	within 30 days of receipt of form 34B from Settlement Commission	60 days		
6	Decision regarding validity/invalidity of the application by the SC	Within 15 days of receipt of report from CIT	75 days		Within 30 working days
7	<b>Second Stage Report</b> Calling of further report from CIT by Sending of Form 34B's Annexures and enclosures (section 245 D(3) and Rule 9 of SC Rules )	No Time limit is mentioned in the Act.			Needs to be specified
8	Second report by CIT	Within 90 days of receipt of communication from SC	165 days	working days	Within 90 working days
9	Order u/s 245D (4)	Within 12 months from the end of the month in which application was made  Now within 18 months	250- 165=85 days available to settlement commission for delays  375-165=210	Out of 365 working days take away (52 weeksX 2 for Sat/sun) roughly out of 250	Given pendency, number of benches, etc practical disposal targets be fixed rather than a statutory limitation

It was felt that there needed to be consistency in the legislation so that there were no sudden jerks such as those introduced by Finance Act 2007 where all cases were to be decided by 2008 failing which proceedings would abate this was counterproductive

to the spirit of Settlement namely to reduce litigation and achieve finality and quick collection of taxes. Now the Direct Taxes Code also does not address this aspect of continuity since there is no Alternative Dispute Resolution Forum and even no sunset clauses for what will happen to the huge pendency of cases..

### **Action to be Taken**

*Submitted for consideration of :*

- *Honble Member(L&C) for suitable amendments by TPL*

## **2.7 Regarding Issues pertaining to Administrative and Procedural exigencies to streamline departmental liason with ITSC**

### **2.7.1 Regarding Requests from CIT's regarding Priority Hearing In High Income Cases**

- The CITs present were unanimous in their emphasis on the importance of time management and prioritization of work and their emphasis on quantum of revenue involved determining the priority of pending cases in a situation of scarce resources.
- CIT's especially requested that the List of cases likely to be fixed by the ITSC in each quarter be given in advance so that field CIT's could plan for such hearings and ensure that the officers were available with the relevant documents on the said dates.

The Chairman ITSC was unequivocal in responding that while the Settlement Commission would not permit any interference in the matter of its fixation which was strictly on the basis of date of receipt - he agreed to accept a letter from the CsIT with reference to pendency of old cases. Such a list could highlight the importance of the cases wherein priority fixation was sought wrt revenue locked up therein and a request for early disposal thereof. It was also decided to consider the request for a quarterly list of fixation for CIT's to plan their work.

### **2.7.2 The Spirit of Settlement and why CIT's are critical to reaching early Settlement**

Sh. B.R. Sudhakar, Chairman, Settlement Commission in the course of his inaugural keynote address emphasized the role of the Assessment Charge CIT's to the success of the ITSC. He also dwelt on the spirit of Settlement.....which required that there should not be **“needlessly proliferating litigation” or “and holding up collections”**. His emphasis was on the significance of the CsIT as the key to ensure expeditious settlement. He advised the CsIT to pay special attention to the Rule 9 Reports and include in their report their considered comments on the Statement of Facts (SOF) which was usually based upon either the asset-capitalization method or the income-earning method. He advised the C'sit's present to furnish speaking reports after applying their minds to the affidavit filed by the applicant. He also emphasized that reports be furnished only after examining the seized material and not just the Appraisal Report to evaluate whether the applicant's surrender was true and fair.

**2.7.3 Regarding Enquiry u/s 245D(3)**

The issue of inquiry u/s 245D(3) in cases where the applicant moved the Settlement Commission before framing of assessment order was discussed. Participants were unanimous in their concern that the A.Os had no opportunity to make any inquiry/ investigation or even examine the seized material. From the discussions of the house it emerged that the facility available under section 245D(3) for inquiry was under-utilized by CsIT and their A.Os. The concern that seized material should not go unexamined could be effectively addressed by utilizing this provision and further the Rule-9 report of the CIT also required that it should be furnished after such enquiry as was necessary to satisfy himself regarding the truth and fairness of the surrender offered by the applicant in the Appendix to Form 34B of the I.T. Rules, 1962.

**2.7.4 Regarding AO's attendance of ITSC proceedings and regular Interaction to facilitate better communication between the Field and the CIT (DR)'s**

The CIT(DR)'s present spoke of the satisfaction in bringing a case to settlement where they received support from the field in terms of compliance with requisition of record and reports and briefing of the CIT(DR). Such cases invariably resulted in orders favourable to revenue.

The CIT's present on the other hand spoke of the multiple references from the Settlement Commission, the longstanding pendency of cases wherein all reports had been sent, and difficulty of sparing the limited number of Assessing Officers for 4-5 days at a time for attending ITSC proceedings especially since officers were at times called on a Friday and the case was fixed on Monday which resulted in the officer being away from HQ for 4-5 days. In response to this it was agreed to try and fix local Delhi cases briefing on Mondays and that of mofussil stations during the week. The consensus that emerged also was that

- a properly prepared Rule 9 Report would ensure that there were no back-references and
- there was a requirement for informal interaction on a regular basis, to facilitate better communication between the Field and the CIT (DR)'s and also facilitate pending reports etc

**2.7.5 Quarterly meeting between CIT(DR), DIT(Inv) and Administrative CIT with pendency:**

Quarterly meetings between Field and ITSC officers could take the form of an informal lunch meeting every quarter where pendency lists of reports due could be exchanged and priority lists of cases drawn up by the field CIT's could be exchanged. CCIT (Central), Mr Sunil Chopra offered to take up the lead in this regard, by setting up a committee comprising of CIT-2 Central Charge, New Delhi, CIT(DR)'s, ITSC and DI(Inv) ITSC, for facilitating such liason for Central Charge New Delhi.

**Action to be Taken:**

*Submitted for consideration of :*

1. *Member Settlement Commission*
2. *CCIT (CCA), New Delhi and all Delhi Charge CCIT's with CIT's having Pendency in the Settlement Commission.*
3. *CCIT (CCA), Chandigarh and all NWR Charge CCIT's for further dissemination to CIT's having Pendency in the Settlement Commission.*
4. *CCIT (Central Charge), New Delhi for dissemination to Central Charge CIT's New Delhi*
5. *DGIT(Inv.), Chandigarh for dissemination to Central Charge CIT's NWR.*

## **2.8 Some other Statutory and Legal Issues pertaining to Settlement**

### **2.8.1 Regarding the Quantum of Income for Admission of the case in the Settlement Commission and Related Cases**

There was discussion on the statutory limits which effectively meant that related cases wherein the income was below the specified limit (i.e Rs. 50 Lacs in Search cases; and Rs. 10 Lacs in other cases wef 1-6-10) were not eligible for application to the Settlement Commission.

One view was that these limits prevented a full settlement and finality of proceedings, since litigation in related cases below the eligible limit went on even after Settlement in regular assessment proceedings. This would also pose a problem in Search cases wef 1-6-2010 since group would not be covered in the definition of "case" u/s 245(b). Here again the group as a whole would be prevented from making a comprehensive settlement due to the income criteria u/s 245C(1) *proviso i*. Related group cases would have to continue in regular proceedings.

On the other hand the CIT(DR) and the DIT(Inv.) highlighted the emergence of a new technique for evasion observed in Settlement Commission cases, where applicants used an existing case hitherto not detected by the Department/ not mentioned in the search warrant and showed disclosure in this case and then wanted it roped into Settlement, to overcome the amendments made by FA 2007 but again relaxed by FA 2010. There thus emerged consensus on the view that was a need for a relook at the issue regarding the limits prescribed in Proviso to section 245C[1] for admitting cases to be examined more thoroughly if the objective of cutting down on litigation was to be achieved.

### **Action to be Taken**

*Submitted for consideration of :*

- *Honble Member(L&C) for suitable amendment by TPL*

## 2.9 Regarding Issuance of Circulars to ensure consistency countrywide on the same issues

One of the issues raised during the course of the proceedings was the question of whether seized cash can be adjusted against advance tax liability of the applicant. Participants may refer to **Circular in this regard which already exists -see CBDT's letter F No 286/105/2005-IT(Inv-II) dt 13-7-06.**

## 2.10 Regarding Amendments required to be made in the Settlement Commission (Procedure) Rules 1997

Following amendments introduced by the Finance Acts 2007 and 2010, certain changes are required in the ITSC (Procedure) Rules 1997.

For example, in the Procedure for filing settlement application the following insertion appears to be required:

### 2.10.1 Change Required in Rule 5 of the ITSC(Procedure) Rules

#### **Extract**

*5. (1) A settlement application shall be presented in Form No. 34B set out in Appendix II to the Income-tax Rules, 1962, by the applicant in person or by his agent, to the Secretary at the headquarters of the Commission at New Delhi or of the Bench within whose jurisdiction his case falls or to any officer authorised in this behalf by the Secretary, or shall be sent by registered post addressed to the Secretary, or to such officer.*

*(2) A settlement application sent by post under sub-rule (1) shall be deemed to have been presented to the Secretary or the officer authorised by the Secretary on the day on which it is received in the office of the Commission.*

In the aforesaid extract from the ITSC (Procedure) Rules 1997, the following insertion needs to be made:

“An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in Form No 34 BA <sup>82</sup> of having made such application to the said Commission.]”

### 2.10.2 Change Required in Rule 6 of the ITSC (Procedure) Rules

#### **Extract**

**Commissioner's report, etc., under section 245D (1).**

**6. On receipt** of a Settlement application, a copy of the said application (excluding the Annexure) shall be forwarded by the Commission to the Commissioner with the direction to furnish his report under sub-section (1) of section 245D within **45 days** of the receipt of the said copy of the application by him.

In the aforesaid extract from the ITSC (Procedure) Rules 1997, the following corrections need to be made:

- Instead of “**on receipt**” It needs to be inserted that “Once an application has been allowed to be proceeded with” and
- **30 days** need to be substituted instead of 45 days.

***Action to be Taken***

*Submitted for consideration of :*

*Honble Chairman Settlement Commission for suitable amendments in ITSC(procedure) Rules 1997*

**2.11 Regarding Amendments required to be made in the Office Procedure Manual**

On similar lines as discussed in foregoing paras **updating changes** are required to be made in the Office Procedure Manual 2003.

***Action to be Taken***

*Submitted for consideration of :*

*Honble Member(L&C) for suitable updation in OP Manual*

**2.12 Alternative Dispute Resolution in Direct Taxes Code 2010- Provision for continuity or Inclusion of Sunset Clauses.**

Also what happens after the introduction of the DTC? Will we allow High Courts to adjudicate these issues too as in the case of ‘abatement’ of settlement cases after FA 2007 or shall we take steps, ourselves as a Department, to provide for an Alternative Dispute Resolution Forum?

At the very least there should be **sunset clauses** in the Direct Taxes Code for the phasing out of the ITSC before whom there is a very large existing pendency of cases, which has yet to be verified.

***Action to be Taken***

*Submitted for consideration of :*

*Honble Member(L&C) for suitable inclusion in DTC 2010*

*Compiled by :*

Punam Khaira Sidhu, Director RTI

**As per guidance of Mr GG Shukla, DGIT(NADT), Nagpur.**



## 2.13 Annexures

### 2.13.1 Annexure-1: Schedule for the Seminar

#### Seminar on Settlement Commission and Its Role as an Alternative Dispute Resolution Forum on 15.06.2010

Date	From	To	Topic of the session	Subject
15.6.2010 (Tuesday)	10.30 AM	10.35 AM	<b>Overview &amp; Welcome</b>	Mrs. P.K. Sidhu, DIT(RTI) Discussion Paper- Overview
	10.35 AM	11.15 AM	<b>Inauguration and Key note Address</b>	Sh. B.R. Sudhakara, Chairman Settlement Commission, Delhi Bench.
	11.15 AM	11.45 AM	Procedural matters, Reports at admission stage & reports under Rule -9- ITSC's perspective)	Sh. P.K. Dubey, Member Settlement Commission
	11.45	12.00	<b>Tea Break</b>	
	12.00 noon	01.00 PM	Interactive session with all officers	Sh. Navneet Soni, DIT (Inv.) ITSC Sh. R.R. Pathak , Secy. ITSC Sh. Jayant Diddi CIT (DR-I) ITSC Smt. Amrapali Das CIT (DR-II),ITSC Sh. Ramesh Chander, Addl. DIT (Inv) Sh. Shantanu Dhamija Addl DIT (Panel) Sh. Rajesh Jha, ADDL DIT
	01.00 PM	02.00 PM	<b>Lunch</b>	
	02.00 PM	03.00 PM	Substantive Law & Machinery provisions, Procedural matters, Reports at admission stage & reports under Rule -9	Sh. Ramesh Chander, Addl DIT (Inv) ITSC, Delhi Bench
	03.00 PM	04.00 PM	Amendments after 1-6-2007 , Finance Act, 2007 and Finance Act, 2010	Padamshri Sh. T.N. Manoharan, CA
	04.00	04.15 PM	<b>Tea Break</b>	
	04.15 PM	05:00PM	Plugging the loopholes for more effective resolution of cases in favor of department	Sh. Jayant Diddi CIT DR-1/ Smt. Amrapali Das CIT (DR-II), Settlement Commission
	05.00 PM to 05.30 PM		<b>Valediction</b>	Sh. Sunil Chopra, CCIT (Central), New Delhi
	05.30 PM onward		Vote of Thanks	Sh. Anuj Garg, ITO Course Counselor

## 2.13.2 Annexure-II: List of Participants at Seminar

Sr. No.	Name of the Officer	Designation	Sr. No.	Name of the Officer	Designation
1.	Kulwant Singh	CIT, Faridabad	26.	Ashok Mittal	Addl. CIT, New Delhi.
2.	Balvir Singh	CIT, Hissar	27.	Shantanu Dhamija	Addl. DIT, ITSC, New Delhi.
3.	Smt. Kiran Oberoi Vasudev	CIT, Ludhiana	28.	Rajesh Jha	Addl. DIT, ITSC, New Delhi.
4.	K.K. Sinha	CIT-III, Ludhiana	29.	Ramesh Chander	Addl. Dir. (Inv.), ITSC, New Delhi.
5.	M.S. Ray	CIT (A)XVIII, New Delhi.	30.	R.R. Prasad	JCIT, New Delhi.
6.	Arun Bhatnagar	CIT (C)-II, New Delhi.	31.	Chetan P.S. Rao	DCIT,CC-I, Chandigarh
7.	S.K. Chaudhary	CIT (C) - III, New Delhi.	32.	A.N. Mishra	DCIT,CC-II, Ludhiana
8.	Navneet Soni	DIT (Inv), ITSC, New Delhi.	33.	Rajesh Kumar	DCIT (C) New Delhi
9.	Jayant Diddi	CIT (DR-I), New Delhi.	34.	Vinod Johri	DCIT(CC), New Delhi
10.	Amrapali Das	CIT (DR - II), New Delhi.	35.	Sudhir Kumar	DCIT (CC ), New Delhi.
11.	Rajeev Kumar	Addl. CIT, (Central), Ludhiana.	36.	Smt. Meenakshi Vohra	DCIT,(CC),New Delhi
12.	Sheela Chopra	Addl. CIT O/o CIT-VII, Range-19, New Delhi	37.	J. C. Bindra	DCIT (CC), New Delhi.
13.	Parneet Mahal Suri	Addl. CIT, Range-VI, Mohali.	38.	K. V. K. Singh	DCIT (CC), New Delhi.
14.	Ishtiyaque Ahmed	Addl.CIT, New Delhi.	39.	Ms. Ritu Sharma	ACIT,CC-II, Chandigarh
15.	M.P. Singh	Addl. CIT, New Delhi.	40.	Ms. Radha Katyal	ACIT,CC, Karnal
16.	Rolee Aggarwal	Addl. CIT, New Delhi.	41.	Amaninder S. Dhindsa	ACIT (C), New Delhi.
17.	Sarbjeet Singh	Addl. CIT, New Delhi.	42.	Majhar Akram	ACIT (CC), New Delhi
18.	Sunita Singh	Addl. CIT, New Delhi.	43.	Dr.Vedanshu Tripathi	ACIT(CC), New Delhi
19.	Meenakshi J. Goswami	Addl. CIT, New Delhi.	44.	V.M. Mahidar	ACIT(CC), New Delhi
20.	Dr. Devender Singh	Addl. CIT, New Delhi.	45.	B. L. Sharma	ACIT (CC), New Delhi.
21.	Amitabh Kumar Sinha	Addl. CIT, New Delhi.	46.	Jeetendra Kumar	ACIT (CC), New Delhi.
22.	Sanjay Kumar	Addl. CIT (C), New Delhi.	47.	S.N. Pandey	ACIT (CC), New Delhi.
23.	Nikhil Chaudhary	Addl. CIT (C), New Delhi.	48.	V.K. Sheoran	ACIT (CC), New Delhi.
24.	P.K. Prusty	Addl. CIT, New Delhi.	49.	Mukesh Sharma	ACIT (CC), New Delhi.
25.	Smt. S. Narsamma	Addl. CIT, New Delhi.			

## 2.14 Indicative List of C'sIT wise Pendency

*Indicative List*

NUMBER OF PENDING CASES (INCLUDING SUPPLEMENTARY LIST AND RESTORED BY RAJASTHAN HIGH COURT)

S.No.	CIT	No. of Cases	Unit
1	Agra	12+13 (*)	R
2	Amritsar-I	3+7 (*)	K
3	Amritsar-II	2	K
4	Bhatinda	10+3(*)	K
5	Chandigarh-I	11+38	R
6	Dehradun	1	R
7	Delhi	1	R
8	Delhi Central-I	55+35	K
9	Delhi Central-II	87	R
10	Delhi-I	10	K
11	Delhi-II	10	K
12	Delhi-III	8	K
13	Delhi-IV	8	K
14	Delhi-V	2+3	R
15	Delhi-VII	6	R
16	Delhi-VIII	4	R
17	Delhi-IX	6	R
18	Delhi-X	8	R
19	Delhi-XI	8	R
20	Delhi-XII	1	R
21	Delhi-XIII	2	R
22	Faridabad	6	R
23	Hissar	4	R
24	Ghaziabad	3	R
25	Jalandhar-I	20+12	R
26	Jalandhar-II	4	R
27	Jaipur (C)	55+115(@)	R
28	Jaipur	4	R
29	Jaipur-I	3+7(@)	R
30	Jammu	1	
31	Jagadhari	2	K
32	Jodhpur-II	7	R
33	Karnal	3	K
34	Kanpur-I	13+1	R
35	Kanpur-II	9+1	R
36	Kanpur	85+11	R
37	Ludhiana (C)	209+44	K
38	Ludhiana-I	20+1	K
39	Ludhiana-II	2	K
40	Ludhiana-III	2	K
41	Panchkula	11+2	R
42	Patiala	22	K
43	Rohtak	1	R
44	Shimla	1	R
45	Udaipur	1	K

(\*) As per supplementary list  
 (@) Cases restored by Rajasthan High Court

**3 Extract from the Income Tax Act 1961 and Rules 1962 and Formats for making an Application for Settlement**

**Extract from the Income Tax Act 1961 and Rules 1962 and Formats for making an Application for Settlement**



### 3.1 Extract From Income Tax Act 1961

#### <sup>54</sup>[CHAPTER XIX-A

#### SETTLEMENT OF CASES

##### <sup>55</sup>Definitions.

**245A.** In this Chapter, unless the context otherwise requires,—

(a) “Bench” means a Bench of the Settlement Commission;

<sup>56</sup>[(b) “case” means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of [section 245C](#) is made:

**Provided that—**

(i) a proceeding for assessment or reassessment or recomputation under [section 147](#);

(ii) <sup>56a</sup>\*\*\*]

(iii) <sup>56a</sup>\*\*\*]

(iv) a proceeding for making fresh assessment in pursuance of an order under [section 254](#) or [section 263](#) or [section 264](#), setting aside or cancelling an assessment,

shall not be a proceeding for assessment for the purposes of this clause.

*Explanation.*—For the purposes of this clause—

(i) a proceeding for assessment or reassessment or recomputation referred to in clause (i) of the proviso shall be deemed to have commenced from the date on which a notice under [section 148](#) is issued;

(ii) <sup>56b</sup>\*\*\*]

(iii) a proceeding for making fresh assessment referred to in clause (iv) of the proviso shall be deemed to have commenced from the date on which the order under [section 254](#) or [section 263](#) or [section 264](#), setting aside or cancelling an assessment was passed;

<sup>56c</sup>[(iiia) a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (b) of sub-section (1) of [section 153A](#) in case of a person referred to in [section 153A](#) or [section 153C](#), shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made;]

(iv) a proceeding for assessment for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or <sup>56d</sup>[clause (iv) of the proviso or clause (iiia) of the Explanation], shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made;]

(c) “Chairman” means the Chairman of the Settlement Commission;

(d) “income-tax authority” means an income-tax authority specified in [section 116](#);

(e) “Member” means a Member of the Settlement Commission, and includes the Chairman and a Vice-Chairman;

(f) “Settlement Commission” means the Income-tax Settlement Commission constituted under [section 245B](#);

(g) “Vice-Chairman” means a Vice-Chairman of the Settlement Commission <sup>57</sup>[and includes a Member who is senior amongst the Members of a Bench].]



**Income-tax Settlement Commission.**

**245B.** (1) The Central Government shall constitute a Commission to be called the Income-tax Settlement Commission <sup>58</sup>[\* \* \*] for the settlement of cases under this Chapter.

(2) The Settlement Commission shall consist of a Chairman <sup>59</sup>[and as many Vice-Chairmen and other members as the Central Government thinks fit] and shall function within the Department of the Central Government dealing with direct taxes.

(2A) <sup>60</sup>[\* \* \*]

(3) The Chairman <sup>61</sup>[, Vice-Chairman] and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts:

**Provided** that, where a member of the Board is appointed as the Chairman <sup>62</sup>[, Vice-Chairman] or as a member of the Settlement Commission, he shall cease to be a member of the Board.

<sup>63</sup>[\* \* \*]

**<sup>64</sup>[Jurisdiction and powers of Settlement Commission.**

**245BA.** (1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) The Bench for which the Chairman is the Presiding Officer shall be the principal Bench and the other Benches shall be known as additional Benches.

(4) Notwithstanding anything contained in sub-sections (1) and (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

(5) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the Presiding Officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the Presiding Officer or in the office of one or the other Members of the Bench, the remaining two persons may function as the Bench and if the Presiding Officer of the Bench is not one of the remaining two persons, the senior among the remaining persons shall act as the Presiding Officer of the Bench :

**Provided** that if at any stage of the hearing of any such case or matter, it appears to the Presiding Officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the Presiding Officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

<sup>65</sup>[(5A) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a Special Bench consisting of more than three Members.]

(6) Subject to the other provisions of this Chapter, the places at which the principal Bench and the additional Benches shall ordinarily sit shall be such as the Central Government may, by notification <sup>66</sup>in the Official Gazette, specify <sup>65</sup>[and the Special Bench shall sit at a place to be fixed by the Chairman.]]

**<sup>67</sup>[Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.**

**245BB.** (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-

Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.]

<sup>67</sup>[**Power of Chairman to transfer cases from one Bench to another.**

**245BC.** On the application of the assessee or the <sup>68</sup>[Chief Commissioner or Commissioner] and after notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.]

<sup>69</sup>[**Decision to be by majority.**

**245BD.** If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.]

**Application for settlement of cases.**

<sup>70</sup>**245C.** <sup>71</sup>[(1) An assessee may, at any stage of a case relating to him <sup>72</sup>, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the <sup>73</sup>[Assessing] Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided :

<sup>74</sup>[**Provided that no such application shall be made unless,—**

- (i) *in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of [section 153A](#) or clause (b) of sub-section (1) of [section 153B](#) in case of a person referred to in [section 153A](#) or [section 153C](#) have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,*
- (ii) *in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,*

*and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.]*

(1A) For the purposes of sub-section (1) of this section <sup>75</sup>[\*\*\*], the additional amount of income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

<sup>76</sup>[(1B) Where the income disclosed in the application relates to only one previous year,—

- (i) if the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income;
- (ii) if the applicant has furnished a return in respect of the total income of that year, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income.]

<sup>77</sup>[(1C) The additional amount of income-tax payable in respect of the income disclosed in the application relating to the previous year referred to in sub-section (1B) shall be,—

- (a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause;
- (b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;
- (c) <sup>78</sup>[\*\*\*].]

(1D) Where the income disclosed in the application relates to more than one previous year, the additional amount of income-tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1B) and (1C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of income-tax payable in respect of the income disclosed in the application.

(1E) <sup>79</sup>[\*\*\*]

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed <sup>80</sup>.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

<sup>81</sup>[(4) An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in the prescribed manner <sup>82</sup> of having made such application to the said Commission.]

#### **Procedure on receipt of an application under [section 245C](#). <sup>83</sup>**

**245D.** <sup>84</sup>[(1) On receipt of an application under [section 245C](#), the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with:

**Provided** that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.]

(1A) <sup>85</sup>[Omitted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.]

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner.

<sup>86</sup>[(2A) Where an application was made under [section 245C](#) before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

*Explanation.*—In respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

(2B) The Settlement Commission shall,—

- (i) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or
- (ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007,

call for a report from the Commissioner, and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the Commissioner:

**Provided** that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:

**Provided further** that where the Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(2D) Where an application was made under sub-section (1) of [section 245C](#) before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.]

<sup>87</sup>[(3)The Settlement Commission, in respect of—

- (i) an application which has not been declared invalid under sub-section (2C); or
- (ii) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section,

may call for the records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

**Provided** that where the Commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

(4) After examination of the records and the report of the Commissioner, if any, received under—

- (i) sub-section (2B) or sub-section (3), or
- (ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any

other matter relating to the case not covered by the application, but referred to in the report of the Commissioner.

(4A) The Settlement Commission shall pass an order under sub-section (4),—

- (i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;
- (ii) in respect of an application made on or after the 1st day of June, 2007 <sup>87a</sup>*[but before the 1st day of June, 2010]*, within twelve months from the end of the month in which the application was made;]
- <sup>87b</sup>*[(iii) in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end of the month in which the application was made.]*

<sup>88</sup>[(5) Subject to the provisions of [section 245BA](#), the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of [section 245BD](#) shall apply.]

(6) Every order passed under sub-section (4) shall provide for the terms of settlement <sup>89</sup>including any demand by way of <sup>90</sup>[tax, penalty or interest], the manner in which any sum due under the settlement <sup>89</sup>shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

<sup>91</sup>[(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at <sup>92</sup>[one and one-fourth per cent for every month or part of a month] on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.]

(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income-tax authority concerned, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

<sup>93</sup>[(8) For the removal of doubts, it is hereby declared that nothing contained in [section 153](#) shall apply to any order passed under sub-section (4) or to any order of assessment, reassessment or recomputation required to be made by the <sup>94</sup>[Assessing] Officer in pursuance of any directions contained in such order passed by the Settlement Commission <sup>95</sup>[and nothing contained in the proviso to sub-section (1) of section 186 shall apply to the cancellation of the registration of a firm required to be made in pursuance of any such directions as aforesaid.]]

<sup>96</sup>**[Power of Settlement Commission to order provisional attachment to protect revenue.**

**245DD.** (1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner provided in the Second Schedule :

**Provided** that where a provisional attachment made under [section 281B](#) is pending immediately before an application is made under [section 245C](#), an order under this sub-section shall continue such provisional attachment up to the period up to which an order made under [section 281B](#) would have continued if such application had not been made :

**Provided further** that where the Settlement Commission passes an order under this sub-section after the expiry of the period referred to in the preceding proviso, the provisions of sub-section (2) shall apply to such order as if the said order had originally been passed by the Settlement Commission.

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

**Provided** that the Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as it thinks fit <sup>97</sup>[\*\*\*].

#### **Power of Settlement Commission to reopen completed proceedings.**

**245E.** If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed <sup>98</sup>[\* \* \*] under this Act by any income-tax authority before the application under [section 245C](#) was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also :

<sup>99</sup>**[Provided** that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under [section 245C](#) exceeds nine years :]

<sup>1</sup>**[Provided further** that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under [section 245C](#) is made on or after the 1st day of June, 2007.]

#### **Powers and procedure of Settlement Commission.**

**245F.** (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income-tax authority under this Act.

(2) Where an application made under [section 245C](#) has been allowed to be proceeded with under [section 245D](#), the Settlement Commission shall, until an order is passed under sub-section (4) of [section 245D](#), have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case :

<sup>2</sup>**[Provided** that where an application has been made under [section 245C](#) on or after the 1st day of June, 2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made:

**Provided further** that where—

- (i) an application made on or after the 1st day of June, 2007, is rejected under sub-section (1) of [section 245D](#); or
- (ii) an application is not allowed to be proceeded with under sub-section (2A) of [section 245D](#), or, as the case may be, is declared invalid under sub-section (2C) of that section; or
- (iii) an application is not allowed to be further proceeded with under sub-section (2D) of [section 245D](#),

the Settlement Commission, in respect of such application shall have such exclusive jurisdiction upto the date on which the application is rejected, or, not allowed to be proceeded with, or, declared invalid, or, not allowed to be further proceeded with, as the case may be.]

(3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act requiring the applicant to pay tax on the basis of self-assessment <sup>3</sup>[\* \* \*] in relation to the matters before the Settlement Commission.

(4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(5) <sup>4</sup>[\* \* \*]



(6) <sup>5</sup>[\* \* \*]

<sup>6</sup>(7) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.]

#### **Inspection, etc., of reports.**

**245G.** <sup>7</sup>No person shall be entitled to inspect, or obtain copies of, any reports made by any income-tax authority to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

**Provided** that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

#### **Power of Settlement Commission to grant immunity from prosecution and penalty.**

**245H.** (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under [section 245C](#) has cooperated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also <sup>8</sup>[(either wholly or in part)] from the imposition of any penalty under this Act, with respect to the case covered by the settlement :

<sup>9</sup>**Provided** that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under [section 245C](#) :]

<sup>10</sup>**Provided further** that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under [section 245C](#) on or after the 1st day of June, 2007.]

<sup>9</sup>[(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of [section 245D](#) within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.]

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person <sup>11</sup>[\* \* \*] had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

#### <sup>12</sup>**[Abatement of proceeding before Settlement Commission.**

**245HA.** (1) Where—

- (i) an application made under [section 245C](#) on or after the 1st day of June, 2007 has been rejected under sub-section (1) of [section 245D](#); or

- (ii) an application made under [section 245C](#) has not been allowed to be proceeded with under sub-section (2A) or further proceeded with under sub-section (2D) of [section 245D](#); or
- (iii) an application made under [section 245C](#) has been declared as invalid under sub-section (2C) of [section 245D](#); or
- (iv) in respect of any other application made under [section 245C](#), an order under sub-section (4) of [section 245D](#) has not been passed within the time or period specified under sub-section (4A) of [section 245D](#),

the proceedings before the Settlement Commission shall abate on the specified date.

*Explanation.*—For the purposes of this sub-section, “specified date” means—

- (a) in respect of an application referred to in clause (i), the day on which the application was rejected;
- (b) in respect of an application referred to in clause (ii), the 31st day of July, 2007;
- (c) in respect of an application referred to in clause (iii), the last day of the month in which the application was declared invalid;
- (d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in sub-section (4A) of [section 245D](#) expires.

(2) Where a proceeding before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under [section 245C](#) had been made.

(3) For the purposes of sub-section (2), the Assessing Officer, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.

(4) For the purposes of the time-limit under [sections 149, 153, 153B, 154, 155, 158BE](#) and [231](#) and for the purposes of payment of interest under [section 243](#) or [244](#) or, as the case may be, [section 244A](#), for making the assessment or reassessment under sub-section (2), the period commencing on and from the date of the application to the Settlement Commission under [section 245C](#) and ending with “specified date” referred to in sub-section (1) shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under sub-section (1) of section 186, the period aforesaid shall, likewise, be excluded.]

### <sup>13</sup>[Credit for tax paid in case of abatement of proceedings.

**245HAA.** Where an application made under [section 245C](#) on or after the 1st day of June, 2007, is rejected under sub-section (1) of [section 245D](#), or any other application made under [section 245C](#) is not allowed to be proceeded with under sub-section (2A) of [section 245D](#) or is declared invalid under sub-section (2C) of [section 245D](#) or has not been allowed to be further proceeded with under sub-section (2D) of [section 245D](#) or an order under sub-section (4) of [section 245D](#) has not been passed within the time or period specified under sub-section (4A) of [section 245D](#), the Assessing Officer shall allow the credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before the Settlement Commission.]

### **Order of settlement to be conclusive.**

**245-I.** Every order of settlement passed under sub-section (4) of [section 245D](#) shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

**Recovery of sums due under order of settlement.**

**245J.** Any sum specified in an order of settlement passed under sub-section (4) of [section 245D](#) may, subject to such conditions, if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered in accordance with the provisions of Chapter XVII, by the <sup>14</sup>[Assessing] Officer having jurisdiction over the person who made the application for settlement under [section 245C](#).

<sup>15</sup>**[Bar on subsequent application for settlement.**

**245K.** (1) Where—

- (i) an order of settlement passed under sub-section (4) of [section 245D](#) provides for the imposition of a penalty on the person who made the application under [section 245C](#) for settlement, on the ground of concealment of particulars of his income; or
- (ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case; or
- (iii) the case of such person was sent back to the Assessing Officer by the Settlement Commission on or before the 1st day of June, 2002,

then, he shall not be entitled to apply for settlement under [section 245C](#) in relation to any other matter.

(2) Where a person has made an application under [section 245C](#) on or after the 1st day of June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of [section 245D](#), such person shall not be subsequently entitled to make an application under [section 245C](#).]

**Proceedings before Settlement Commission to be judicial proceedings.**

**245L.** Any proceeding under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of [sections 193](#) and [228](#), and for the purposes of section 196, of the Indian Penal Code (45 of 1860).

**Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement Commission.**

**245M.** <sup>16</sup>[Omitted by the Finance Act, 1987, w.e.f. 1-6-1987.]

### 3.2 Extract From Income Tax Rules 1962

#### <sup>42</sup>[PART IX-A

#### SETTLEMENT OF CASES

**Form of application for settlement of case** <sup>43</sup>[and intimation to the Assessing Officer].

**44C.** (1) An application for settlement of a case under sub-section (1) of section 245C shall be made in quintuplicate in **Form No. 34B** <sup>44</sup>[and shall be verified in the manner indicated therein.]

<sup>45</sup>[(2) The application referred to in sub-rule (1), the verification appended thereto, the Annexure to the said application and the statements and documents accompanying the Annexure shall be signed by the person specified in sub-rule (2) of rule 45.]

(3) Every application in connection with the settlement of a case shall be accompanied by a fee of five hundred rupees.]

<sup>46</sup>[(4) The assessee shall, on the date on which he makes the application to the Settlement Commission, intimate in **Form No. 34BA** to the Assessing Officer of having made such application to the Commission.]

#### <sup>47</sup>[Disclosure of information in the application for settlement of cases.

**44CA.** (1) The Settlement Commission shall, while calling for a report from the Commissioner under sub-section (2B) of section 245D, forward a copy of the application in **Form No. 34B** (other than the Annexure and the statements and other documents accompanying such Annexure) along with a copy of the order under sub-section (1) of section 245D or, as the case may be, an intimation in respect of an application deemed to have been allowed to be proceeded with under sub-section (2A) of that section 245D.

(2) Where an application has not been declared invalid under sub-section (2C) of section 245D or an application has been allowed to be further proceeded with under sub-section (2D) of section 245D, the information contained in the Annexure to the application in **Form No. 34B** and in the statements and other documents accompanying such Annexure shall be sent to the Commissioner.]

#### Fee for furnishing copy of report.

**44D.** (1) The following scale of fees shall be levied by the Settlement Commission for furnishing under section 245G a copy of any report or part of any report made by any income-tax authority to the Settlement Commission :—

For the first two hundred words or less 80 paise

For every additional hundred words or fraction thereof 40 paise.

(2) The fee referred to in sub-rule (1) shall be recovered in advance in cash.

## 3.3 Form No 34 B read with Rule 44C/44CA of IT Rules 1962

FORM NO. 34B		APPLICATION FOR SETTLEMENT OF CASES (See section 245C of the Income-tax Act, 1961 and rules 44C and 44CA of the Income-tax Rules, 1962)		In the Settlement Commission At ..... Bench Settlement Application No. ....20.....20.....	
PART-A PERSONAL INFORMATION	Name		PAN		
	Flat/Door/Block No.		Status (Tick) <input checked="" type="checkbox"/>		
	Name of Premises/ Building/Village		(i) Individual <input type="checkbox"/>		
	Road/Street/Post Office		(ii) Hindu undivided family <input type="checkbox"/>		
	Area/Locality		(iii) Company <input type="checkbox"/>		
	State Pin Code		(iv) Firm <input type="checkbox"/>		
	Town/City/District		(v) Cooperative Society <input type="checkbox"/>		
	E-mail Address		(vi) Local Authority <input type="checkbox"/>		
STD code and Phone Number ( )		(vii) Association of persons <input type="checkbox"/>			
		Body of individuals not covered by (v) or (vi) <input type="checkbox"/>			
PART-B ASSESSMENT JURISDICTION AND FILING STATUS	1.	Designation of Assessing Officer ( <i>Ward/Circle</i> )			
	2.	The Commissioner having jurisdiction over the applicant			
	3.	Assessment year(s) in connection with which the application for settlement is made and the date of filing the return			
PART-C PARTICULARS OF INCOME DISCLOSED AND PAYMENT OF ADDITIONAL TAX AND INTEREST	1.	The date from which the proceedings are pending. ( <i>Assessment year wise</i> )			
	2.	Particulars of the issues to be settled, nature and circumstances of the case. ( <i>Assessment year wise</i> )			
	3.	Full and true disclosure of income which has not been disclosed before the Assessing Officer. ( <i>Assessment year wise</i> )			
	4.	The additional amount of income-tax payable on income referred to in (3). ( <i>Assessment year wise</i> )			
	5.	Interest payable. ( <i>Assessment year wise</i> )			
	6.	Total of (5) and (6)			
	7.	Date of payment of tax and interest referred to in (7)			

## VERIFICATION

I, ....., son/daughter/wife of .....do hereby solemnly declare that to the best of my knowledge and belief, what is stated above and in the Annexure [including the statement(s) and documents accompanying such Annexure] is correct and complete. I further declare that I am making this application in my capacity as ..... [write your designation] and that I am competent to make this application and to verify it. I also certify that the proceedings for which this application is being made is not covered by the proviso to clause (b) of section 245A of the Income-tax Act.	
Verified today the .....day of .....	
Place	Signature of applicant

## ANNEXURE

**Statement containing particulars referred to in Part-C, item 3 of the application under section 245C(1) of the Income-tax Act, 1961**

1.	Amount of income which has not been disclosed before the Assessing Officer ( <i>same as in Part-C, item 3 of the application</i> )
2.	Additional amount of income-tax payable on the said income
3.	Interest payable
4.	Full and true statement of facts regarding the issues to be settled, including the terms of settlement sought for by the applicant. ( <i>Assessment year wise</i> )
5.	The manner in which the income referred to item No. 1 has been derived. ( <i>Assessment year wise</i> )
Place	Date
Signature of Applicant	



## 3.4 Form No 34 BA under Rule 44C of IT Rules 1962

FORM 34BA		<b>INTIMATION TO THE ASSESSING OFFICER OF HAVING MADE AN APPLICATION TO THE SETTLEMENT COMMISSION</b> (See Section 245C of the Income-tax Act, 1961 and rule 44C of the Income-tax Rules, 1962)		For Office use only Receipt No. _____ Date _____ Seal and Signature of Receiving Official _____	
<b>PART-A PERSONAL INFORMATION</b>	Name		PAN		
	Flat/Door/Block No.	Name of Premises/Building/Village	Status (Tick) <input checked="" type="checkbox"/>		
	Road/Street/Post Office	Area/Locality	(i) Individual <input type="checkbox"/>		
		State Pin Code	(ii) Hindu undivided family <input type="checkbox"/>		
	Town/City/District		(iii) Company <input type="checkbox"/>		
	E-mail Address	STD code and Phone Number ( )	(iv) Firm <input type="checkbox"/>		
			(v) Cooperative Society <input type="checkbox"/>		
			(vi) Local Authority <input type="checkbox"/>		
<b>PART-B ASSESSMENT JURISDICTION AND FILING STATUS</b>	1.	Designation of Assessing Officer (Ward/Circle)			
	2.	The Commissioner having jurisdiction over the applicant			
	3.	Assessment year(s) in connection with which the application for settlement is made and the date of filing the return			

**CERTIFICATE**

I, _____, son/daughter/wife of _____ do hereby certify that I have made today an application in Form No. 34B under sub-section (1) of section 245C of the Income-tax Act with above-mentioned particulars to the Settlement Commission at _____. Bench by post/by hand (delete whichever is not applicable) vide Receipt No. _____ (write receipt No. in the case application has been made by hand) in my capacity as _____ [write your designation]				
Place	Date	Signature of applicant		

### **3.5 Income Tax Settlement Commission (Procedure) Rules, 1997 [GSR 361(E), Dated 4-7-1997]**

In exercise of the powers conferred by sub-section (7) of section 245F of the Income-tax Act, 1961 (43 of 1961), and in supersession of the Income-tax Settlement Commission (Procedure) Rules, 1987, except as respects things done or omitted to be done before such supersession, the Income-tax Settlement Commission hereby makes the following rules, namely :—

#### **Short title and commencement.**

1. (1) These rules may be called the Income-tax Settlement Commission (Procedure) Rules, 1997.

(2) These shall come into force on the date of their publication in the Official Gazette.

#### **Definitions.**

2. In these rules, unless the context otherwise requires,—

(i) “Act” means the Income-tax Act, 1961 (43 of 1961);

(ii) “annexure” means the annexure to the application in Form No. 34B, set out in Appendix II to the Income-tax Rules, 1962;

(iii) “applicant” means a person who makes an application to the Commission under sub-section (1) of section 245C to have a case relating to him settled;

(iv) “authorised representative” means,—

(a) in relation to an applicant, except where such applicant is required under any of the provisions of Chapter XIX-A of the Act to attend in person, a person who would be entitled to represent him before any income-tax authority or the Appellate Tribunal under section 288;

(b) in relation to a Commissioner, a person,—

(i) authorised in writing by the Commissioner or the Chief Commissioner; or

(ii) duly appointed by the Central Government as authorised representative or duly authorised by the Central Board of Direct Taxes to appear, plead and act for the Commissioner in any proceeding before the Commission;

(v) “Commission” means the Income-tax Settlement Commission constituted under sub-section (1) of section 245B and includes, where the context so requires, any Bench exercising or discharging the powers or functions of the Commission;

(vi) “Officer of the Commission” means Secretary, Director of Income-tax (Investigation), Additional Director of Income-tax (Investigation) and Deputy Director of Income-tax (Investigation);

(vii) “Secretary” means the Secretary of the Commission and includes an Administrative Officer;

(viii) “Section” means a section of the Act;



(ix) "Settlement application" means an application made by a person to the Commission under sub-section (1) of section 245C to have a case relating to him settled;

(x) all other words and expressions used in these rules and not defined but defined in the Act, shall have the same meaning respectively assigned to them in the Act.

**Language of the Commission.**

3. (1) All pleadings before the Commission may, at the option of the applicant, be in Hindi or in English.

(2) All orders and other proceedings of the Commission may, at the option of the Commission, be in Hindi or in English.

**Signing of notices, etc.**

4. (1) Any requisition, direction, letter, authorisation, order or written notice to be issued by the Commission shall be signed by the Chairman or a Vice-Chairman or any other Member of the Commission or by the Secretary (or by any other officer of the Commission).

(2) Nothing in sub-rule (1) shall apply to any requisition or direction which the Commission may, in the course of the hearing, issue to an applicant or a Commissioner or an authorised representative personally.

**Procedure for filing settlement application.**

5. (1) A settlement application shall be presented in Form No. 34B set out in Appendix II to the Income-tax Rules, 1962, by the applicant in person or by his agent, to the Secretary at the headquarters of the Commission at New Delhi or of the Bench within whose jurisdiction his case falls or to any officer authorised in this behalf by the Secretary, or shall be sent by registered post addressed to the Secretary, or to such officer.

(2) A settlement application sent by post under sub-rule (1) shall be deemed to have been presented to the Secretary or the officer authorised by the Secretary on the day on which it is received in the office of the Commission.

**Commissioner's report, etc., under section 245D(1).**

6. On receipt of a settlement application, a copy of the said application (excluding the Annexure) shall be forwarded by the Commission to the Commissioner with the direction to furnish his report under sub-section (1) of section 245D within 45 days of the receipt of the said copy of the application by him.

**Preparation of paper books, etc.**

7. (1) If the applicant or the Commissioner, as the case may be, proposes to refer or rely upon any documents or statements or other papers, he may submit six copies of a paper book containing such papers duly indexed and paged at least two weeks before the date of hearing under sub-section (1) of section 245D of the Act:

**Provided**, however, that the Commission may in an appropriate case condone the delay and admit the paper book.

(2) If the applicant proposes to refer to or rely upon any documents or statements or other papers, during the course of hearing under sub-section (4) of section 245D of the Act, he may submit six copies of a paper book containing such papers duly indexed and paged, within thirty days or within such extended period as may be allowed by the Commission, of the receipt of an order under sub-section (1) of section 245D.

(3) If the Commissioner proposes to refer to or rely upon any documents or statements or other papers during the course of hearing under sub-section (4) of section 245D of the Act, he may submit six copies of a paper book containing such papers duly indexed and paged along with his report referred to in rule 9.

(4) The Commission may, suo motu, direct the preparation of six copies of a paper book by and at the cost of the applicant or the Commissioner, as the case may be, containing copies of such statements, documents and papers, etc., as it may consider necessary for the proper disposal of the settlement application or matters arising therefrom.

(5) The papers referred to in sub-rules (1), (2), (3) and (4) must be legibly written or type-written in double space or printed. If xerox copy of the document is filed, then the same should be legible. Each paper should be certified as a true copy by the party filing the same, or his authorised representative and indexed in such a manner as to give a brief description of the documents, with page numbers and the authority before whom it was filed.

#### **Filing of affidavit.**

8. Where a fact, which is not borne out by or is contrary to the record relating to the case, is alleged in the settlement application (including the annexure and the statement or other documents accompanying such annexure), it shall be stated clearly and concisely and supported by a duly sworn affidavit.

#### **<sup>1</sup>[Commissioner's further report.**

9. Where an order is passed by the Commission under sub-section (1) of section 245D allowing the settlement application to be proceeded with, a copy of the annexure to the said application together with a copy of each of the statements and other documents accompanying such annexure, shall be forwarded to the Commissioner along with a copy of the said order with the direction that the Commissioner shall furnish a further report within ninety days of the receipt of the said annexure (including the statements and other documents accompanying it) or within such further period as the Commission may specify.

If the Commissioner fails to furnish his report on or before the expiry of the specified period of 90 days or such extended period, the Commission may pass the appropriate order without such report.]

#### **Date and place of hearing of application to be notified.**

10. On receipt of the Commissioner's further report, if any, referred to in rule 9, the Commission shall notify to the applicant and the Commissioner the date and place of hearing of the application.

#### **Sitting of Bench.**

11. A Bench shall hold its sittings at its headquarters. The Bench may, however, at the discretion of the Presiding Officer, hold its sittings at any place in its jurisdiction notified by the Commission.

**Powers of a Bench.**

12. A Bench shall dispose of such settlement applications or matters arising therefrom as the Chairman may by general or special order direct.

**Constitution of Special Bench.**

13. (1) The Chairman may, for the disposal of any particular case, constitute a Special Bench consisting of at least five Members drawn from all the Benches of the Commission.

(2) The Special Bench shall be presided over by the Chairman or a Vice-Chairman.

(3) If the Members of the Special Bench are equally divided, they shall state the point or points on which they differ and make a reference to the Chairman who shall refer the case for hearing on such point or points by one or more of other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case.

(4) Notwithstanding anything contained in the foregoing provisions of this rule, if one or more persons constituting the Special Bench (whether such person is the Presiding Officer or any other Member of the Special Bench) are unable to function in the Special Bench owing to illness or any other cause or in the event of occurrence of a vacancy either in the office of the Presiding Officer or in the office of one or other Members of the Special Bench, the remaining Members, if more than three may function as the Special Bench, and the senior most of the remaining Members shall act as the Presiding Officer of the Special Bench.

**Filing of authorisation.**

14. An authorised representative appearing for the applicant at the 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 at the time employed.

**Verification of additional facts.**

15. Where in the course of any proceedings before the Commission any facts not contained in the settlement application (including the annexure and the statements and other documents accompanying such annexure) are sought to be relied upon, they shall be submitted to the Commission in writing and shall be verified in the same manner as provided for in the settlement application.

**Proceedings not open to the public.**

16. The proceedings before the Commission shall not be open to the public and no person (other than the applicant, his employee, the concerned officers of the Commission or the Income-tax Department or the authorised representatives) shall, without the permission of the Commission, remain present during such proceedings.

**Publication of orders of the Special Bench.**

17. The Chairman may, at his discretion, direct the publication of orders or portions containing the rulings of the Special Bench with such modifications as to names and other particulars therein, as he may deem fit.

**Adjournment of hearings.**

18. The Commission may, on such terms as it thinks fit and at any stage of the proceedings, adjourn the hearing of the application or any matters arising therefrom.

**Special provisions in respect of settlement applications made before 1st day of October, 1984.**

19. (1) Where, in respect of a settlement application made before the 1st day of October, 1984, an order is passed by the Commission under sub-section (1) of section 245D of the Act allowing the application to be proceeded with, a notice shall be issued by the Commission to the applicant requiring him to furnish in quintuplicate :—

(a) a full and true statement of facts regarding the matters to be settled (including the manner in which any income disclosed or proposed to be disclosed by the applicant has been derived); and where the settlement involves determination of income, accompanied with annexures containing :—

(i) computation of total income of the applicant for the assessment year or years to which the settlement application relates, in accordance with the provisions of the Act;

(ii) copies of manufacturing account or trading account or both, as the case may be, profit and loss account or income and expenditure account or any other similar account, as the case may be, and balance sheet; and

(iii) in the case of:—

(a) a proprietary business or profession, copy of the personal account of the proprietor;

(b) a firm or association of persons or body of individuals, copies of the personal accounts of the partners or members thereof, as the case may be; and

(c) a partner of a firm or a member of an association of persons or body of individuals, copies of the personal account of such partner or member in the firm or association of persons or body of individuals, as the case may be;

(b) the terms of settlement sought for by the applicant.

(2) The statement of facts, the annexures thereto and the terms of settlement shall each be signed separately by the applicant and the statement of facts shall be verified in the following manner, namely

"I.....  
....., son/daughter/wife of

(Name in full and in block letters)

.....solemnly declare that to the best of my knowledge and belief, the information given in this statement of facts and the annexures accompanying it is correct and complete and other particulars shown therein are truly stated.

I further declare that I am making this statement in my capacity as ..... (designation) and that I am competent to make this statement of facts and to verify it.

Place :.....

.....

Date :.....

Signature

(3) Where a fact which cannot be borne out by or is contrary to the record relating to the case is alleged in the statement of facts furnished under sub-rule (1), it shall be stated clearly and concisely and supported by a duly sworn affidavit.

(4) On receipt of the statement of facts and the terms of settlement under sub-rule (1), the Commission shall forward a copy thereof to the Commissioner calling for his further report.

## **4 Procedural Overview**

### **Procedural Overview**



#### **4.1 Checklist for Application for Settlement (From Settlement Commission Website)**

The main points to be checked in the application are as under :-

- I. Whether the applicant has furnished the return of income as required under part (a) of proviso to section 245C(1).
- II. Whether the additional amount of tax payable on income disclosed exceeds Rs. 1,00,000/- as required under part (b) of proviso to section 245C(1).
- III. Whether calculation of additional tax payable as shown against column (2) of Annexure to the application is as given in the manner laid down in sub-sections (1B) to (1D) of section 245C.
- IV. In a case of search u/s 132, whether the application has been filed after expiry of 120 days from the date of seizure.
- V. Whether there is a case pending before an Income-tax authority with in the meaning of section 245A(b).
- VI. Whether the information against Column 10 of the application (Form No.34B) is provided separately or it is clubbed with the information given in the Annexure to the application. If it is clubbed, it should be called for separately.**
- VII. Whether the information relating to Column 11 of the application is given separately or it is incorporated in the application itself ? If incorporated, it should be called for separately.
- VIII. Whether the Annexure to the application is accompanied by full and true statement of facts regarding the issues to be settled including terms of the Settlement as required in Col. 3 of the Annexure ?
- IX. Whether the manner in which the additional income disclosed has been derived is given as required in Col.4 of the Annexure ?
- X. Whether computation of total income for the year(s) for which the application is made, is given ?
- XI. Whether copies of relevant accounts as required in Notes (i), (ii) and (iii) to the Annexure, are attached ?
- XII. Whether full particulars of proceedings pending before income-tax authorities are given ?

#### **Defects at Snos 1 to V**

Where the application suffers from any of the defects mentioned at Sr.Nos. (i) to (v) above, it is prima-facie non-maintainable. In such cases a letter is written to the applicant inviting his attention to the requirements laid down in section 245C(1) and asking him to show cause as to why his application be not held to be non-maintainable.



If the applicant is unable to offer any cogent explanation and there is no doubt that the application suffers from any of the defects mentioned at Sr.Nos. (i) to (v) above, then the application is held to be non-maintainable.

**Defects at Snos Vi to –Vii**

In cases of defects of the kind mentioned at Sr. Nos. (vi) and (vii) above, the applicant is required to remove the defects within a specified time and only after the necessary remedial action, the application is sent to the CIT for his report.

**Defects at Snos Viii to –Xii**

In case of other defects mentioned at Sr. Nos. (viii) to (xii) above, which are of a minor nature, the application is sent to the CIT for his report under section 245D(1) and at the same time the applicant is also required to remove the defects by a specified date.

Report regarding defects in an application / maintainability thereof etc. is submitted by the T.A. / A.O. to the Secretary. Only when an application is found to be prima facie maintainable, a copy thereof (other than the Annexure and the statements etc.) is forwarded to the concerned CIT as required under Rule 6 of the Income-tax Settlement Commission (Procedure) Rules, 1997 to furnish his report under sub section (1) of Section 245D within 45 days.

**A standard proforma has been devised for calling for the CIT's report** which is sent to him alongwith the application. In this report, apart from other factual information, the CIT is required to comment as to whether any complexity of investigation is involved and the case is otherwise suitable for settlement.

**4.1.1 Reports under Rule 9 of Income Tax Settlement Commission (Procedure) Rules 1997 r.w.s. 245 of IT Act, 1961 by Jayant Diddi, CIT(DR)-I, ITSC**

**A. Basic Requirements of A Rule 9 Report**

- All the issues in the Statement of Fact (SOF) to be replied to/ commented upon in the report.
- Report to be prepared after thorough verification and adequate inquiries.
- Issues to be crystallized specifically and comments should be to the point.
- Report to be duly supported with evidences.
- May not be prepared on conjectures and surmises.
- ROI to be thoroughly examined qua the factual and legal issues (e.g. depreciation).
- **Settlement proceedings are final hence no issue having a bearing on the revenue to be left out.**
- All seized documents to be thoroughly considered and not just the ones which find a mention in the SOF.
- Adequacy of the offer to be thoroughly examined and the fund flow statement to be deeply scrutinized.
- Quantification of income is required to be done issuewise / yearwise / assessee-wise, (Inadequate disclosure etc.)
- Ownership of the documents to be ascertained correctly.
- Department's approach need to be proactive and not reactive.
- Higher authorities to apply their mind and make a meaningful contribution.
- Must be signed by the CIT himself and not merely forwarded.
- Payment of taxes must find a mention in the report.
- Timely submission of the report.

**B. Procedural Requirements**

- Timely forwarding the copies of the SA, SOF and Rule 9 report to the o/o CIT(DR).
- Requests for adjournments, if necessary, to be addressed to the Secretary, ITSC well in time.

**C. Requirements of Assessing Officers**

- To come fully prepared to brief CIT (DR's) and be punctual.
- To bring seized documents and other relevant records which should be duly flagged.

**4.1.2 Inputs desired by ITSC in Commissioner's Report u/s 245D (2B) (Validity report) at Admission stage by Rajesh Jha, Addl DIT, SC****a. Report Regarding Compliance with Mandatory Conditions for validity of an Application**

Validity report of Commissioner u/s 245D(2B) must point out that the application is not valid because mandatory condition for an application is violated such as:

- 1) The application is not maintainable as assessment proceedings for the year applied for is not pending on the date of application.
- 2) Proceedings u/s 147 have been applied for settlement.
- 3) Proceedings for fresh assessment in pursuance of order u/s 245/263/264 setting aside or canceling as assessment is involved.
- 4) The additional amount of Income Tax payable does not exceed the limits mentioned under Proviso to Section 245C(1).
  - (I) U/s 153A or 153B proceedings -50 lakhs.
  - (II) Any other case - 10 lakhs.
- 5) The application is not accompanied with the prescribed fee of Rs. 500/-
  - If any of the above points is apparent from the application prima-facie, the application may be rejected by Income Tax Settlement Commission u/s 245D(1) after hearing the applicant.
  - If any of these conditions is found to be violated on the basis of Commissioner's report u/s 245D(2B) i.e. validity report, after hearing the applicant, the application may be declared invalid by ITSC u/s 245D (2C)

**b. Inputs desired by ITSC in Commissioner's further report (Rule-9 report & Section 245D(3) report)****Further Report (Rule-9 Report)**

- 1) Whether factual details regarding proceedings, tax payments are correct.
- 2) Para-wise comments on the veracity of averments made in application.
- 3) Stand vis-à-vis statement of facts (SOF) regarding issues to be settled and terms of settlement sought.

- 4) Comments on any other significant issue for the relevant assessment years mentioned in the application and which must be considered for assessment of total income of the applicant.
- 5) In case of reference or reliance on any document/Statement/other papers, the CIT must file paper-book (six copies) duly indexed and paged alongwith report under rule 9. The papers must be legibly written or type-written in double space or printed. Photo-copies should be legible. Each page should be certified as true and indexed giving a brief description of document with page nos. & the authority before whom filed.

**c. Section 245D(3) Enquiry Report**

- 6) In case of direction u/s 245D(3), the Commissioner must get the enquiry of investigation done expeditiously on the points mentioned in the direction of ITSC and the report must be submitted along with further report Rule -9 report.
- 7) If the Commissioner feels that any point needs enquiry or investigation for proper settlement of the case, the same must be brought to the notice of ITSC immediately so that ITSC may take a view on the proposal.

Whenever, any enquiry or investigation on any points remains to be completed, the report regarding remaining points must be submitted alongwith a specific prayer for time required to complete the pending enquiry/investigation.

## 4.1 Downloads from Settlement Commission Site

### Screen shot of Settlement Commission Website



## Filing Applications

### 1.1

Section 245F(7) empowers the Commission to regulate its own procedure and procedure of the Benches thereof in all matters arising out of exercise of its powers or discharge of its functions. In exercise of these powers, the Commission had notified the Income-tax Settlement Commission (Procedure) Rules, 1976 which were replaced by the Income-tax Settlement Commission (Procedure) Rules, 1997 w.e.f. 1.6.1997. The Rules, inter-alia, laid down the procedure for filing the settlement applications before the Commission which is briefly as under :-

### 1.2

The tax payer desirous of settling his case is required to make an application under section 245C(1) in form No.34B (**Page - 111**) prescribed under Rule 44C of the Income-tax Rules, 1962, duly signed and verified as prescribed therein. This application is to be made in quintuplicate and has to be accompanied by a fee of Rs. 500/-. The fee has to be paid (with a challan) in a branch of an authorised

bank or a branch of State Bank Of India or a branch of Reserve Bank of India. Cheques, Drafts, Hundies or other negotiable instruments sent directly to the Commission, are not acceptable.

### **1.3**

The settlement application shall be presented in person or by registered post to the Secretary or an authorised officer of the Bench within whose jurisdiction the case falls. A settlement application sent by post shall be deemed to have been presented on the day on which it is received in the office of the Commission.

### **1.4**

On receipt of an application, it is diarised, seen by the A.O./Secretary and passed on to the Technical Assistant who verifies whether the application has been furnished in prescribed form giving the required particulars and has been properly verified and signed by the competent person and is accompanied with the prescribed fee of Rs. 500/-. In case there is any defect of the above nature, the application is returned to the applicant pointing out the defects, for re-submission after removing the same. While returning the application in original, one copy of it is retained for purposes of record and future reference. Such applications need not be entered in the register maintained for the purpose. If the application does not suffer from any of the defects mentioned above, the same is entered in the register and a distinctive file number (also called a registration No.) is allotted and the applicant is informed about it through letter. It is then closely scrutinised in accordance with the check-list devised for the purpose.

**1.5** The main points to be checked in the application are as under :-

- Whether the applicant has furnished the return of income as required under part (a) of proviso to section 245C(1).
- Whether the additional amount of tax payable on income disclosed exceeds Rs. 1,00,000/- as required under part (b) of proviso to section 245C(1).
- Whether calculation of additional tax payable as shown against column (2) of Annexure to the application is as given in the manner laid down in sub-sections (1B) to (1D) of section 245C.
- In a case of search u/s 132, whether the application has been filed after expiry of 120 days from the date of seizure.
- Whether there is a case pending before an Income-tax authority with in the meaning of section 245A(b).
- Whether the information against Column 10 of the application (Form No.34B) is provided separately or it is clubbed with the information given in the Annexure to the application. If it is clubbed, it should be called for separately.
- Whether the information relating to Column 11 of the application is given separately or it is incorporated in the application itself ? If incorporated, it should be called for separately.
- Whether the Annexure to the application is accompanied by full and true statement of facts regarding the issues to be settled including terms of the Settlement as required in Col. 3 of the Annexure ?
- Whether the manner in which the additional income disclosed has been derived is given as required in Col.4 of the Annexure ?
- Whether computation of total income for the year(s) for which the application is made, is given ?
- Whether copies of relevant accounts as required in Notes (i), (ii) and (iii) to the Annexure, are attached ?
- Whether full particulars of proceedings pending before income-tax authorities are given ?

### **1.6**

Where the application suffers from any of the defects mentioned at Sr.Nos. (i) to (v) above, it is prima-facie non-maintainable. In such cases a letter is written to the applicant inviting his attention to the requirements laid down in section 245C(1) and asking him to show cause as to why his application be not held to be non-maintainable. If the applicant is unable to offer any cogent explanation and there is

no doubt that the application suffers from any of the defects mentioned at Sr.Nos. (i) to (v) above, then the application is held to be non-maintainable. In cases of defects of the kind mentioned at Sr. Nos. (vi) and (vii) above, the applicant is required to remove the defects within a specified time and only after the necessary remedial action, the application is sent to the CIT for his report. In case of other defects mentioned at Sr. Nos. (viii) to (xii) above, which are of a minor nature, the application is sent to the CIT for his report under section 245D(1) and at the same time the applicant is also required to remove the defects by a specified date. A report regarding defects in an application / maintainability thereof etc. is submitted by the T.A. / A.O. to the Secretary . Only when an application is found to be prima facie maintainable, a copy thereof (other than the Annexure and the statements etc.) is forwarded to the concerned CIT as required under Rule 6 of the Income-tax Settlement Commission (Procedure) Rules, 1997 to furnish his report under sub section (1) of Section 245D within 45 days. A standard proforma has been devised for calling for the CIT's report which is sent to him alongwith the application . In this report, apart from other factual information, the CIT is required to comment as to whether any complexity of investigation is involved and the case is otherwise suitable for settlement.

### **1.7**

After all defects in an application under section 245C(1) are removed and CIT's report is received or where CIT's report is not received within the period of 45 days prescribed in second proviso to section 245D(1) and the Commission decides to proceed without report of the CIT, the Secretary prepares a note regarding prima facie admissibility of the case under section 245D(1) and puts up the matter before the Commission. In this note, the Secretary mentions inter-alia, as to whether - (a) any proceedings are pending, (b) the return of income has been furnished, (c) the additional amount of income-tax payable on the income disclosed exceeds Rs. 1 lakh. (d) any complexity of investigation is involved, (e) the disclosure is full and true and (f) the case is otherwise suitable for admission.

### **1.8**

After considering the Secretary's note, report of the CIT and the case records, if the Commission is of the view that the application for settlement can be straight-away admitted u/s 245D(1), even without hearing the applicant or the CIT, an order to that effect is passed forthwith. In cases where the application is not so admitted, the application is directed by the Commission to be fixed for hearing. If the applicant requests for a copy of the CIT's report under section 245D, the same is supplied on payment of fee as prescribed under rule 44D of the Income-tax Rules 1962.

### **1.9**

The cases are normally fixed for hearing in strict chronological order and the order under section 245D(1) is passed by the Commission after hearing both the applicant and the CIT. The case may be represented before the Commission either by the applicant or the CIT personally or through their authorised representatives. An authorised representative in relation to the applicant means a person who would be entitled to represent him before any Income-tax authority or the Appellate Tribunal under section 288 of the I.T.Act whereas in relation to the Commissioner, it means a person authorised by the Commissioner in writing or a person duly appointed by Government of India by notification in official gazette as authorised representative, to appear, plead or act for the Commissioner in any proceedings before the Commission. In practice, there are two CsIT appointed by the CBDT to function as CIT(DR) in each of the Benches. These persons put forward the Deptt's case at the hearings. They are of course briefed by the Deptt's officers before the cases are taken up by the Commission. All the pleadings before the Commission may, at the option of the applicant be in Hindi or in English. All orders and other proceedings of the Commission, may, at the option of the Commission be in Hindi or in English.

### **1.10**

After hearing the applicant and the CIT, the Commission passes an order either allowing the application to be proceeded with or rejecting the same. Copies of all orders passed under section 245D(1), are sent, inter-alia, to the assessee and the CIT. Where in an order u/s 245D(1), an application for settlement is rejected, nothing further is required to be done at the Commission's end. The application, the CIT's report and the other case papers are consigned to record. Once an

application for settlement is allowed to be proceeded with, a copy of the Annexure to the settlement application together with a copy of the statements and other documents accompanying such annexure, are sent to the CIT for a further report to be sent in quadruplicate within 90 days of receipt of the Commission's letter.

#### **1.11**

In respect of applications filed on or after 1.10.1984, the Commission in its order passed under section 245D(1) allowing the application to be proceeded with, directs the applicant to pay, within 35 days of receipt of a copy of the order, the additional amount of receipt income tax payable on the income disclosed in the application and to furnish proof of such payment to the Commission and the A.O. having jurisdiction, within fifteen days of such payment. If an assessee is unable to pay the additional amount of Income-tax for good and sufficient reasons, he may apply to the Commission for allowing payment of such income-tax in instalments and the Commission may extend the time for payment or grant suitable instalments subject to the assessee furnishing adequate security. In any case, if payment of the additional tax is delayed beyond 35 days of the date of receipt by the applicant, a copy of the order of the Commission allowing the application to be proceeded with, the assessee shall be required to pay interest on such delayed payment as prescribed under section 245D(2C). In case of default on the part of the applicant, the assessing officer may be directed by the Commission to recover the remaining unpaid amount together with interest payable thereon under sub-section 2(C) of section 245D of Income-tax Act, 1961, and with any penalty imposed in accordance with the provisions of section 245D(2D) and under Chapter XVII of the Income-tax Act, 1961.

#### **1.12**

In a case where the application is partly allowed to be proceeded with, the Commission writes to the applicant to submit a fresh Annexure together with the Statements and other documents accompanying such Annexure, after excluding the information in respect of the assessment years not admitted .



#### 4.1.1 Format for Calling for Rule 6 Report

FORM NO. 2  
(ITSC-2010)  
Calling for report from Commissioner of Income Tax under section 245D (2B) of  
Income Tax Act, 1961

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
INCOME TAX SETTLEMENT COMMISSION  
.....Bench.....  
Tel:..... Fax:.....

Dated:

To

The Commissioner of Income Tax  
.....  
.....

Sir,/ Madam,

**Sub:- Furnishing of report u/s 245D (2B) of the I.T. Act. 1961**

**Ref: Settlement Application No.....in the case of .....for A.  
Yr(s)..... report regarding-**

The application under reference has been allowed to be proceeded with ..... u/s 245D(1) on  
.....A copy of the order u/s 245D(1) dated.....is enclosed.

2. A copy of the Settlement Application in Form No. 34B (**other than the “Annexure’ and statements and accompanying documents)** is forwarded herewith. As per the provisions of section 245D (2B) of the IT Act, a report on the validity of the application is required to be furnished within thirty days of receipt of this letter. ***In this report, specific comments, inter-alia, on the following points, may be given-***

1. **Validity of the application for the relevant years.**
2. **Correctness and adequacy of additional taxes and interest paid by the applicant.**
3. **The compliance by the applicant as mandated u/s 245C(4).**

3. Six copies of the report should be sent within 30 days on receipt of this letter. The said report shall be sent directly to the Secretary, Income Tax Settlement Commission, ..... If the report is based on any document such as notice/letters sent to the applicant and their replies/statements etc., then the copies of the same along with your report may also be furnished. It may be noted that if no report is received within such period, the Settlement Commission shall proceed further in the matter as per the provisions of the Act.

4. I.T. case records and other relevant materials relating to the A.Ys. covered by the application should also be sent along with the report.

Yours faithfully,

(Secretary)

Encl: As above.

**Copy to:**

1. The Commissioner of Income Tax (DR), ITSC.
2. The Director of Investigation, ITSC.

(Secretary)

## 4.1.2 Format Calling for Rule 9 Report

FORM NO. 5

(ITSC-2010)

Calling for Report under Rule-9 of Income Tax Settlement Commission (Procedure)  
Rules, 1997

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
INCOME TAX SETTLEMENT COMMISSION

.....Bench.....  
Tel:..... Fax:.....

**Dated:**

To

The Commissioner of Income Tax

.....  
.....

Sir/ Madam,

**Sub:- Furnishing of report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997 – regarding-**

**Ref:- Settlement Application No. ....**  
**In the case of.....**  
**For A.Yr(s).....**

The application under reference has not been declared invalid u/s 245D(2C). A copy of 'Annexure' to the Settlement Application, together with a copy of statements and other documents accompanying such 'Annexure' is forwarded herewith.

2. It is requested that a report as per provisions of Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997 may be furnished on the matter(s) covered by the application. Any additional facts relating to the applicant's income, which you feel have been suppressed by the applicant may also be indicated.

3. **Six copies of the report should be sent within 90 days on receipt of this letter.** The said report may be sent directly to the Secretary, Income Tax Settlement Commission.

4. Please note that an order u/s 245D(4) needs to be passed in this case on or before..... and if your report does not reach this office by the time mentioned in para 3, the Settlement Commission may proceed to pass an order u/s 245D(4) without such report.

5. It may be noted that under sub-section (2) of section 245F, the Settlement Commission has exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax authority under the Income Tax Act 1961, in relation to the assessment year(s) covered by the Settlement application made under section 245C, which has been allowed to be proceeded with from the date on which the application was made. No investigation under any of the provisions of the Income Tax Act can therefore, be made by an Income Tax authority in respect of such assessment year(s). However, if detailed investigations are necessary in this case on the basis of the material available with you and you are satisfied that an order under sub-section (3) of section 245D is essential, **a detailed report on such points for consideration of the Commission may be sent within 30 days of the receipt of this letter.** If the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may pass an order under sub-section (3) of section 245D, giving appropriate directions.

Yours faithfully,

(Secretary)

**Copy for information and necessary action to:**

1. The Director of Investigation, ITSC.
2. The Commissioner of Income Tax (DR), ITSC.

(Secretary)

### 4.1.3 Format Calling for Report u/s 245 D(4) if the IT Act 1961

Report of Investigation under Section 245D(4) of the Income Tax Act

#### PART – I : BASIC FACTS

1. Application No.
2. Date of receipt of application
3. Full name & Address of the applicant
4. Name & Address of the legal representatives,  
if any
5. G.I.R./P.A.N.
6. Concerned Assessing Officer  
and the CIT having present jurisdiction
7. Status of the Applicant
8. Accounting year ending
9. Nature of Business
10. Whether this case is concerned with another case.  
If yes, give-  
a) Application No.  
b) Nature of connection
11. Details about pendency of Cases.

A.Y.	Date of filing of return of income	Nature of Proceedings	Date from which proceeding pending	Authority before whom pending

12. Date of Search, if Any, under I.T. Act
13. Details of seizure
 

	Found (Rs.)	Seized (Rs.)
a. Cash		
b. Value of Jewellery		
c. Value of FDRs, Pronotes, Hundia etc.		

- d. Value of other assets
- e. Total (a to d)
- f. Date and other details of order of deemed seizure u/s. 132(3), if any,
- g. Date of order U/s. 132(5), if any
- h. If any provisional attachment has been made, give details viz. date, details of property attached and period for which The attachments valid.

14. Details of income tax estimated U/s. 132(5) and taxes thereon:

Asst. Year	Income	Tax	Interest	Penalty	Total

15. Date of application U/s. 132(11), if any ----

16. Date of order U/s. 132(12) ----

17. Relief given, if any.

Assessment Year	Head of Income	Relief given in Income

18. Details of assets released by -----  
the CIT, if any.

19. Date of inspection and obtaining copies of seized books of accounts/documents etc. -----

20. Brief summary of the appraisal report. Have all the issues/investigation suggested in the appraisal report been examined by the Assessing Officer/DDI?

Issues raised in the Appraisal Report	Views of the A.O.	Views of the ADI
-----		

21. Date of search and/or seizure by any other Central or State authorities and details of such seizure. -

22 Date of order U/s. 245D(1)

23 Assessment years admitted

24 Assessment years not admitted with reasons for rejection ----

25 Date of filing of SOF, if any:

26 Date of calling for CIT's report under Rule 9

27 Date of report of the CIT

28 Date of receipt of letter from the Commission asking for Addl./ Jt. DIT(Inv.)'s report

29 Date of submission of Addl./Jt. DIT(Inv.)'s report: As per forwarding letter

30 Reasons for delay, if any, in submission of Addl./ Jt. DIT (Inv.)'s Report: -

31. Details of assessment

Asstt. Year	Income/ Returned/ Date	Income assessed date	Section Under which assessed	Whether completed after date of application/ order of admission

32. Details of hearing before Addl./ Jt. DIT(Inv.)

Dates of hearing(\*)

33. Whether the applicant has co-operated with the Addl./Jt. DIT(Inv.) during the hearing(s) in respect of timely submission of details/ documents

**34 Details of Block Assets (Chapter XIV-B)**

- i. Disclosure made U/s. 132(4) under undisclosed income
- ii. Date of notice U/s. 158 BC
- iii. Date of filing of return U/s 158 BC and income declared
- iv. Date of completion of Block assessments total income completed and tax levied
- v. Details of interest/penalty levied U/s. 158 BFA

**35. Whether any action U/s. 245E is proposed, if yes, details thereof:**

Asstt. Year	Income Returned/ date of filing of return	Income Assessed	Date of Assessment Year

**36. Details of set off/carry forward**

Item	Asstt. year	Amount (Rs.)
i. Unabsorbed Depreciation		
ii Business Loss	----	----
iii Long term capital loss	----	----
iv Allowance U/s. 80 J	----	----
v Carried forward Investment Allowance	----	----
vi Others	---	---

**37. Technical Additions**

Section	Assessment Year Disallowance	Proposed Disallowance
i) 40A(5)/40C	---	---
ii) Rule 6-D	---	---
iii) Rule 6-B	---	40A(8)
v) 37	---	---
vi) Others	---	---

38. Special deduction

	Section	Assessment	Comment of the AO	Comment of the ADI
i)	32A			----
	32AB			----
	35			----
	80HH			----
	80HHC	----		
	80-I			----
	80-J			----
	80-O			----
	Others			

39. Whether any action U/s 104 of the Surtax Act is required, if yes, details thereof:

NO

40. Whether penalty is leviable under the following sections, if yes, details thereof:

SECTION	Addl./Jt.DI'S COMMENTS
271A	
271B	
271C	
271D	-
271E	
Others	

41. Name of authorised representative :  
before the Addl./ Jt. DIT (Inv.)

42. Factual position with regard to :  
Interest/ Penalty

**Part – II****1. Basic Facts**

S.No.	Name of the applicant	Settlement Application No.
-------	-----------------------	----------------------------

**2. Details of Seizure                      Found                      Seized**

(a)	Cash	----	-----
(b)	Value of Jewellery	-----	-----
(c)	Value of FDRs Pronotes Hundia etc.	-	-
(d)	Value of other assets	-	-
(e)	Total (a to d)	----	-----

**3. Modus Oparandi****4. Application u/s 245C(1)**

A.Ys.	Name	Date of Application	Date of Admission	Offer before ITSC (Rs.)

**5. Payment of Tax:****6. Investigation Process**

Shri -----

SA No.-----/



**PART-III**

Assessment Year \_\_\_\_\_

Sl. No.	Issues & Additions in A.O. u/s 158BC	Basis of Addition	Actual facts as per Assessee	ADI's Comments

**PART-IV**

**COMPUTATION OF INCOME**

---

**PART-V**

**INTEREST**

---

**PART-VI**


**PENALTY & PROSECUTION**

#### 4.2 Advisory Observations of Settlement Commission, Delhi Bench for smooth Conduct of Hearings

*Advisory Observations of Settlement Commission, Delhi Bench for Smooth Conduct of Hearings.*

दूरभाष/Phone : 24621761  
फैक्स/Fax : 24656496  
फैक्स/Fax : 24640962

फाइल संख्या :  
File No. : CIT/DR/TSC/10829/650



आयकर आयुक्त (विभागीय प्रतिनिधि)  
समझौता आयोग (आयकर एवं धनकर)  
चौथी मंजिल, लोकनायक भवन, खान मार्केट, नई दिल्ली-110003  
**COMMISSIONER OF INCOME-TAX (D.R.)**  
**SETTLEMENT COMMISSION (I.T.&W.T.)**  
4th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-110003

To

Dated... 27-3-2009

The Chief Commissioner of Income Tax  
Delhi-I  
CR Building  
New Delhi

Sir,

Sub: Observation/directions of the Hon'ble Chairman, Settlement Commission, New Delhi – difficulties faced for the smooth conducting of hearings – reg.-

During the course of hearings before the Hon'ble Settlement Commission, the Bench has made certain observations with the direction that the same may be conveyed to the concerned authorities. Similarly, this office also often faces difficulties in proper representation of the departmental cases before the Hon'ble Settlement Commission due to lack of adequate support/cooperation from the filed formations. The above hampers smooth conduction of hearings before the Hon'ble Settlement Commission due to various reasons as subsequently elaborated. The observations of the Hon'ble Chairman, Settlement Commission, New Delhi and the difficulties faced by this office are summarized as under:-

(i) **Non-submission/delay in the submission of Reports under Rule 9** of the Settlement Commission Procedure Rules by CsIT. The Hon'ble Commissioner has taken a **serious note** of the matter and has observed that before the matter is further precipitated, the concerned authorities must ensure **timely submission** of the Rule 9 reports. The Hon'ble Chairman has observed that the delay/non-submission of reports comes into the way of expeditious disposal of cases which may amount to the **contempt of the directions given by the Hon'ble High Court** to this effect (i.e. expeditious disposal of pending cases).



- (ii) It has been observed by the Hon'ble Settlement Commission that many a times **Rule 9 Reports/Supplementary Reports are not signed/forwarded by the CsIT** which has been **strongly objected** to by the former.
- (iii) The **requests for adjournment** are often made by the departmental authorities at the eleventh hour which has resulted into expression of **displeasure** by the Hon'ble Commission. The requests received at a late stage mostly result into **rejection of the same**. Therefore, if it is felt by the field formations that a request for adjournment is **absolutely necessary** then the same should be made **well in advance** in order to cause minimum inconvenience to the Hon'ble Commission as well as the assessee who are situate all over the North India upon which the Hon'ble Settlement Commission, New Delhi exercises its jurisdiction. It may also be mentioned that the requests for adjournment may always be **addressed to the Secretary, Settlement Commission, New Delhi** under intimation to this office and may always be **signed by the concerned CIT**. Since this office is not empowered to adjourn the cases, such requests should not be made to this office.
- (iv) It has also been directed by the Hon'ble Chairman that a specific **report on the payment of taxes** should invariably be sent in all the cases to the Hon'ble Commission well **before the commencement of the hearing** in respect of every assessee separately, failing which it shall be presumed that the due amount of tax has been paid. Since payment of taxes is a **prerequisite for proceeding** with the Settlement Application due importance is required to be given to the above.
- (v) Many a times it is seen that the **reports under Rule 9 are routinely forwarded** by the CsIT. In this regard, it is requested that a **due application of mind** by the **higher authorities** is essential in the form of their **own comments/observations** to strengthen the AO's reports so as to effectively protect the interest of revenue.
- (vi) As per the procedure, the Settlement Commission forwards a copy each of the **Settlement Application** and the **Statement of Facts** to the CIT concerned who in turn is required to **forward a copy of the same to this office** alongwith a copy of the Report under Rule 9. However, many a times, the above is not done and a **considerable time is lost** by this office in obtaining a copy of the above mentioned documents from the field formations. The CsIT may, therefore, invariably **forward a copy each of the Settlement Application, Statement of Facts immediately upon receipt thereof**. Similarly, a **copy of Report under Rule 9** may also be **sent to this office** while submitting the same to the Hon'ble Commission.



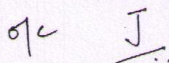
(vii) The **Assessing Officers** many a times **do not observe punctuality** in attending the hearings and also while coming for the briefing of the cases causing great deal of inconvenience to the Hon'ble Commission as well as this office. The AOs are, therefore, required to be directed to be punctual.

(viii) It has been observed that the **Assessing Officers often come unprepared** for the briefing/hearing. It will be helpful if the Assessing Officers come fully prepared and bring a **brief of facts covering all the relevant issues** in every case.

(ix) The **Assessing Officers**, many a times, **do not bring relevant seized records and case records** while attending the hearings and the briefings. The Assessing Officer are always required to bring the seized records while coming for the briefings/hearings.

2. The Hon'ble Settlement Commission, New Delhi, has therefore, directed the undersigned to take up the matter with you with a request that the same may in turn be kindly taken up by you with the other CCsIT/DGsIT. I would, therefore, request you to kindly take up the matter with the concerned authorities situated in the jurisdiction and also issue necessary instructions to the field formations falling under your administrative control so that the observations/directions by the Hon'ble Settlement Commission are kept in mind by the field formations and also the difficulties faced by this office are eliminated and the departmental stand is properly represented to the Hon'ble Commission to effectively protect the interest of revenue.


Yours faithfully,



**(JAYANT DIDDI)**  
**Commissioner of Income Tax (DR)**  
**ITSC-I, New Delhi**

**Copy to:**

1. The CCIT, NWR, Chandigarh/Rajasthan, Jaipur/UP(E), Lucknow/UP(W), Kanpur with a request to kindly issue necessary direction to the filed formations in their jurisdiction.
2. The DGIT, Panchkula/Jaipur/Lucknow with a request to kindly issue necessary direction to the filed formations under their administrative control.
3. The Secretary, Income Tax Settlement Commission, New Delhi, for information.

  
**Commissioner of Income Tax (DR)**  
**ITSC-I, New Delhi**

## **5 Presentations**



## 5.1 An Overview of Amendments made by Finance Act 2007 and Finance Act 2010

### Chapter XIX-A

#### SETTLEMENT OF CASES

S. No.	Section	Subject to which the section relates to	Provision upto 31.05.2007	Provision from 01.06.07 as amended by FA 2007	Provision from 01.06.10 as amended by FA 2010
1	245A(b)	Definition of a Case	Case means proceeding pending for- ✓ Assessment (including search) ✓ Reassessment ✓ Appeal ✓ Revision	Case means proceeding pending for Regular asst.  (asst u/s.153A not covered)	Case means proceeding pending for Regular asst. and asst. u/s.153A relating to search cases
2	245C(1) Proviso (i)	Filing of return	The assessee should have furnished the return of income.	No such specific requirement	No such specific requirement
3	245C(1) Proviso (i)	Minimum additional income tax	Rs.1 Lakh	Rs.3 Lakhs	Rs. 50 Lakhs for Search cases and Rs.10 Lakhs for other cases.
4	245C(1) Proviso (ii)	Payment of additional income tax	Should be paid within 35 days of receipt of admission order	Additional income tax and interest should have been paid prior to filing of application.	Additional income tax and interest should have been paid prior to filing of application.
5	245D(1)	Calling for CIT's report	On receipt of settlement application, ITSC to call for report from CIT with regard to nature and circumstances of the case and complexities of investigation involved.	No requirement for such a report.	No requirement for such a report.
6	245D(1)	Issue of notice to the applicant within 7 days of receipt of application	No time limit within which notice to the applicant to be issued for hearing the case for admission.	Notice to be issued within 7 days of receipt of application.	Notice to be issued within 7 days of receipt of application.
7	245D(1)	Admission of the application	ITSC to pass an order rejecting or allowing the application to be proceeded with within 1 year of filing the application, wherever possible	ITSC to pass an order rejecting or allowing the application to be proceeded with within 14 days of receipt of the application.	ITSC to pass an order rejecting or allowing the application to be proceeded with within 14 days of receipt of the application.

8	245D(1)	Deemed admission	There is no deeming provision, if order is not passed.	If order of admission is not passed within 14 days the application shall be deemed to have been allowed to be proceeded with	If order of admission is not passed within 14 days the application shall be deemed to have been allowed to be proceeded with
9	245D(2A)	Payment of additional income tax after admission.	Within 35 days of receipt of admission order, additional income tax shall be paid.	The additional income tax and interest thereon should have been paid prior to filing of application.	The additional income tax and interest thereon should have been paid prior to filing of application.
10	245D(2B)	Extension of time for payment of tax	On a specific request in writing, the ITSC may extend the time for payment or allow payment in installments if adequate security is provided.	Not Applicable since tax and interest should have been paid prior to filing of application.	Not Applicable since tax and interest should have been paid prior to filing of application.
11	245D(2C)	Interest for delay in payment	Whether or not ITSC allows extension, interest at the rate of 15% per annum is payable for the amount remaining unpaid on expiry of 35 days.	Not Applicable since tax and interest should have been paid prior to filing of application.	Not Applicable since tax and interest should have been paid prior to filing of application.
12	245D(2D)	Recovery of taxes not paid	If tax is not paid within a time limit or extended time, ITSC shall order for recovery of unpaid tax and impose penalty	Not Applicable since tax and interest should have been paid prior to filing of application.	Not Applicable since tax and interest should have been paid prior to filing of application.
13	245D(3)	Time limit for submission of report by CIT on further enquiry/investigation.	There is no specific time restriction for furnishing a report by CIT.	Report by the CIT should be furnished to ITSC within 90 days of receipt of communication from the SC	Report by the CIT should be furnished to ITSC within 90 days of receipt of communication from the SC
14	245D(3) proviso	ITSC can proceed if CIT's report is not received.	ITSC may insist for CIT's specific report.	If no report is furnished, ITSC may proceed without such report.	If no report is furnished, ITSC may proceed without such report.
15	245D(4A)	Time limit for passing order u/s.245D(4)	Where it is possible, within 4 years from end of the financial year in which application was allowed to be proceeded with.	Within 12 months from the end of the month in which the application is filed.	Within 18 months from the end of the month in which the application is filed.
16	245D(6A)	Interest payable on tax payable, if any,	15% per annum from the expiry of 35 days of receipt of order	1.25% per month or part of a month from the expiry of 35 days	1.25% per month or part of a month from the expiry of



## Settlement Commission Handbook 2010

		as per order u/s.245D(4)		of receipt of order	35 days of receipt of order
17	245E	Reopening of completed proceedings.	If ITSC opines that for proper disposal it is necessary, it may order reopening of completed proceedings	There is no such power for ITSC.	There is no such power for ITSC.
18	245F Proviso	Period upto which exclusive jurisdiction by settlement commission in specific cases.	No specific provision.  However, it is implied that it is upto the final order u/s.245D(4).	In a case of rejection-upto the date of order u/s.245D(1);  In a case of invalid application-upto the date of declaration of the application as invalid;	In a case of rejection-upto the date of order u/s.245D(1);  In a case of invalid application-upto the date of declaration of the application as invalid;
19	245H	Restriction on granting of immunity from prosecution for offence under IPC or any Central Act	The ITSC had power to grant immunity from prosecution for offence under IT, WT, IPC or any Other Central Act	The power to grant immunity from prosecution for offence under IPC or any other Central Act is removed	The power to grant immunity from prosecution for offence under IPC or any other Central Act is removed
20	245HA	Abatement of proceeding	There was no provision for abatement of proceeding by ITSC	Under various situations, the settlement application abates	Under various situations, the settlement application abates
21	245HAA	Allowing of tax paid in the cases abated	No provision existed	The Assessing Officer shall allow credit for taxes paid towards settlement if a case got abated and the proceeding is restored for assessment	The Assessing Officer shall allow credit for taxes paid towards settlement if a case got abated and the proceeding is restored for assessment
22	245K	Bar on subsequent settlement application	The assessee is barred from filing another application for settlement in the following circumstances : a. Penalty imposed; b. Convicted u/c.XXII c. Abated u/s.245HA	An assessee can approach for settlement once in life time.	An assessee can approach for settlement once in life time.

Compiled by By T.N. Manoharan CA, Chennai

5.1.1 Presentation by Mr Sudhakar Chairman Settlement Commission, New Delhi



## Income tax Settlement Commission

- Genesis in Wanchoo Committee Report-1971
- Suggested as alternative to general VDIS
- Primary objective—  
The door for compromise should not be closed for an errant taxpayer permanently

## Similar Forums Abroad

- We have Settlement Procedure
- In UK Confession Procedure
- In USA Compromise Procedure



## Why ITSC {As said by W. Committee}

- Initial effective investigation by ITD often did not yield expected tax collection finally  
(Study & Experience Confirm Committee's Conclusion)
- Better utilization of investigation manpower
- A high level machinery expected to ensure fair, just and impartial decision

**Income tax Settlement Commission Established**

## Alternative Dispute Resolution Mechanism

1. ITSC operational from **01.04.1976**  
– more than 34 years old
2. Earliest **A**lternative **D**ispute **R**esolution **M**echanism for Direct Tax disputes
3. Dispute resolution is through settlement process
4. To begin with one bench at Delhi – Principal Bench
5. 3 more added at Mumbai, Kolkata & Chennai wef 09.09.1986

## BASIC FEATURES

- ITSC is an Independent Judicial Forum
- Choice given to tax payers to approach Commission as an alternative dispute resolution mechanism
- Orders of ITSC binding on both Tax payers & IT Dept
- Tax & Interest on Additional Amount Offered has to be paid when filing application
- ITSC has power to Waive Penalties & Prosecution under IT Act
- Can be questioned before HC and SC in writs on violation of constitutional rights **only**

## Changes Since Inception

1. **Many changes over the thirty four years of existence.**
  - a) Veto Power of CIT withdrawn
  - b) Payment of tax after admission changed
  - c) Time limit for final order set
2. **Major changes by Finance Act 2007**
  - a) All old cases pending on 1-4-2008 --**back to IT Dept.** – i.e. **Abate**
  - b) New cases-**One year** time limit for final disposal
  - c) Tax payment on income disclosed along with application
  - d) Following types of cases **excluded** from the purview of the Commission
    - (i) search cases,
    - (ii) matter pending at levels above AO,
    - (iii) re-opened matter before AO

## Changes by Finance Act 2010

- (i) Big search cases brought back
- (ii) Time limit for final order increased to 18 months
- (iii) Search cases can come only after issue of notice u/s 153A or 153C

## Settlement Process

- Settlement through a Judicial Process like in Courts
- In Camera Proceedings
- Both tax payer and ITD present their cases
- Proceedings not purely as adversarial unlike those before other appellate forums- Discussion not pure arguments
- Principles of natural justice adhered to
- Decision by majority

## Effective Functioning of I T S C

- The Applicant
- ITD – IT Personnel
- ITSC – Investigation Unit - IT Personnel
- The Bench

**Today's Seminar is for IT Personnel**

## Role of ITD – New Cases

First Stage – Prima facie Decision

Only Applicant given Opportunity – 7 days

Order in 15 days

Second Stage – Order to decide Validity

**CIT's Report within 1 Month**

Order within 15 Days from  
receipt of CIT's Report

**Scope & Time Limit Needs CIT's Special Attention**

## Role of ITD – New Cases (Contd.)

Third Stage – 245 D (3) Report – Enquiry

-- Rule 9 Report **from CIT**

Fourth Stage – Final Order

- Within **One Year** from the Filing of Application

(increased to 18 months **for applications after 31-05-2010**)

## Role of ITD – Old Cases

### **Litigation on Abatement Provisions**

- Abatement provision brought in by F.A. 2007 led to many writs before many HC & SC
- Led to various decisions & directions
- Abatement provisions stayed in some cases
- **Abatement of proceedings not to come in the way of ITSC disposing the applications before it in most cases**
- Further action by ITSC stayed in few cases
- Uncertainty in working of the Commission
- Work load increased – many orders made set aside to Commission

## Role of ITD – Old Cases

- I. Get Hold of Such Old Cases
  - These are Orphans in ITD
- II. Send Reports Due to ITSC
- III. Lookup if 245D (3) Order Needed
  - Send Proposals on Specific Points Immediately
  - Old Cases- So Consider Whether Fruitful Enquiry Possible before Sending Proposal

## Role of ITD – Old Cases

- IV. Respond when cases are posted
  - Be Proactive with CIT (DR) & DIT (Inv)
- V. CIT's & Addl. CIT's
  - Pl. Give due credit to officers for work done in the old cases



### TWO RECENT CASES CASE - A

- A.Yrs. involved 2002-03 to 2007-08
- Date of application : 11-09-2008
- Date of order u/s 245D(4) : 25-09-2009
- 2 Applicants
  - (A) Pvt. Ltd. Co. - **incorporated on 16-06-1980**
  - (B) Individual- Director
- **Both hold PAN**
- **Filed returns up to A.Y 1990-91; there after no returns filed.**
- Approached Commission before any action by IT Dept.
- Initial income offer **78.87 lacs & 86.89 lacs**
- Tax & interest paid **Rs.17.23 lacs & 45.63 lacs**
- IT Dept. had no historical data & had nothing relevant to submit before the Commission.
- Final settlement of Income at **Rs.1.64 Cr. and Rs. 2.89 Cr.**
- Final Tax & interest **Rs. .95 Cr. and Rs. 1.87 Cr.**

### TWO RECENT CASES CASE - B

- A.Y. involved : 2007-08
- Date of application : 25-07-2008
- Date of order u/s 245D(4) : 29-07-2009
- Individual in business of transportation with 2 own and hired trucks.
- Approached Commission after survey
- During survey unaccounted cash and stock of supari found
- Initial offer Rs.73.87 Lac **(Tax + interest – Rs. 23.95 lacs)**
- CIT led evidence of higher value for concealed stock before ITSC.
- Commission quantified income at **Rs.1.67 Cr.**
- Also imposed penalty of Rs.25,000 for not maintaining books of accounts

5.1.2 Presentation by Padamshri Mr TN Manoharan CA, Chennai

# CHAPTER XIX-A

## SETTLEMENT OF CASES

### A PRESENTATION ON AMENDMENTS MADE BY FINANCE ACT 2007 & FINANCE ACT 2010

Manohar Chowdhry & Associates, Chennai

## SECTION 245A(b)

### *Definition of Case*

Before 31.05.2007	Provision from 1.06.07 amended by FA 2007	Provision from 1.06.10 amended by FA 2010
<p><b>Case</b> means proceeding pending for –</p> <ul style="list-style-type: none"> <li>✓ Assessment (including search)</li> <li>✓ Reassessment</li> <li>✓ Appeal</li> <li>✓ Revision</li> </ul>	<p><b>Case</b> means proceeding pending for Assessment Regular</p> <p>(Asst. u/s.153A not covered)</p>	<p><b>Case</b> means proceeding pending for Regular assessment and assessment u/s.153A relating to search cases.</p>

Manohar Chowdhry & Associates, Chennai

**SECTION 245C(1) Proviso(i)***Filing of Return*

Before  
31.05.2007

The assessee  
should have  
furnished the  
return of income

Provision from 1.06.07  
amended by FA 2007

No such specific  
requirement

Provision from 1.06.10  
amended by FA 2010

No such specific  
requirement

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**SECTION 245C(1) Proviso (i)***Minimum Additional Income Tax*

Before  
31.05.2007

**Rs. 1 Lakh**

Provision from 1.06.07  
amended by FA 2007

**Rs. 3 Lakhs**

Provision from 1.06.10  
amended by FA 2010

**Search cases  
– 50 Lakhs;  
  
Other cases  
– 10 Lakhs**

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**SECTION 245C(1) Proviso (ii)***Payment of Additional Income Tax*

Before  
31.05.2007

Should be paid  
within 35 days of  
receipt of  
admission order

Provision from 1.06.07  
amended by FA 2007

Additional Income  
Tax and Interest  
should have been  
paid prior to filing  
of application

Provision from 1.06.10  
amended by FA 2010

Additional Income  
Tax and Interest  
should have been  
paid prior to filing  
of application

Manohar Chowdhry & Associates, Chennai

**SECTION 245D(1)***Calling for CIT's Report*

Before  
31.05.2007

On receipt of settlement  
application, ITSC to call  
for report from CIT with  
regard to nature &  
circumstances of the  
case and complexities of  
investigation involved

Provision from 1.06.07  
amended by FA 2007

No requirement  
for such a report

Provision from 1.06.10  
amended by FA 2010

No requirement for  
such a report

Manohar Chowdhry & Associates, Chennai

**SECTION 245D(1)***Issue of Notice*

Before  
31.05.2007

No time limit within which notice to the applicant to be issued for hearing the case for admission

Provision from 1.06.07  
amended by FA 2007

Notice to applicant to be issued within 7 days of receipt of application

Provision from 1.06.10  
amended by FA 2010

Notice to applicant to be issued within 7 days of receipt of application

Manohar Chowdhry & Associates, Chennai

**SECTION 245D(1)***Admission of the Application*

Before  
31.05.2007

ITSC to pass an order rejecting or allowing the application to be proceeded with within ONE year of filing settlement application, WHEREVER POSSIBLE

Provision from 1.06.07  
amended by FA 2007

ITSC to pass an order rejecting or allowing the application to be proceeded with within 14 days of receipt of the application.

Provision from 1.06.10  
amended by FA 2010

ITSC to pass an order rejecting or allowing the application to be proceeded with within 14 days of receipt of the application.

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## SECTION 245D(1)

### *Deemed Admission*

Before  
31.05.2007

There is NO  
deeming provision,  
if order is not  
passed

Provision from 1.06.07  
amended by FA 2007

If order is not  
passed WITHIN 14  
days, the application  
shall be deemed to  
have been allowed  
to be proceeded  
with.

Provision from 1.06.10  
amended by FA 2010

If order is not  
passed WITHIN 14  
days, the application  
shall be deemed to  
have been allowed  
to be proceeded  
with.

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## SECTION 245D(2A)

### *Payment of Additional Tax after Admission*

Before  
31.05.2007

Within 35 days of  
receipt of  
admission order,  
additional income  
tax shall be paid.

Provision from 1.06.07  
amended by FA 2007

The addl. income  
tax and interest  
thereon should  
have been paid  
prior to filling of  
application

Provision from 1.06.10  
amended by FA 2010

The addl. income  
tax and interest  
thereon should  
have been paid  
prior to filling of  
application

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## SECTION 245D(2B)

### *Extension of Time for Payment of Tax*

Before  
31.05.2007

On a specific request in writing, the ITSC may extend the time for payment or allow payment in installments if adequate security is provided.

Provision from 1.06.07  
amended by FA 2007

**NOT APPLICABLE**  
since tax & interest should have been paid prior to filing of application

Provision from 1.06.10  
amended by FA 2010

**NOT APPLICABLE**  
since tax & interest should have been paid prior to filing of application

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## SECTION 245D(2C)

### *Interest for Delay in Payment*

Before  
31.05.2007

Whether or not ITSC allows extension, interest @ 15% per annum is payable for the amount remaining unpaid on expiry of 35 days.

Provision from 1.06.07  
amended by FA 2007

**NOT APPLICABLE**  
since tax & interest should have been paid prior to filing of application

Provision from 1.06.10  
amended by FA 2010

**NOT APPLICABLE**  
since tax & interest should have been paid prior to filing of application

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## SECTION 245D(2D)

### *Recovery of taxes NOT paid*

Before  
31.05.2007

If tax is not paid within a time limit or extended time, ITSC shall order for recovery of unpaid tax and impose penalty.

Provision from 1.06.07  
amended by FA 2007

NOT APPLICABLE since tax & interest should have been paid prior to filing of application

Provision from 1.06.10  
amended by FA 2010

NOT APPLICABLE since tax & interest should have been paid prior to filing of application

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## SECTION 245D(3)

### *Time limit for submission of report by CIT on further enquiry/ Investigation.*

Before  
31.05.2007

There is no specific time restriction for furnishing a report by CIT.

Provision from 1.06.07  
amended by FA 2007

Report by the CIT should be furnished to ITSC within 90 days of receipt of communication from the settlement commission.

Provision from 1.06.10  
amended by FA 2010

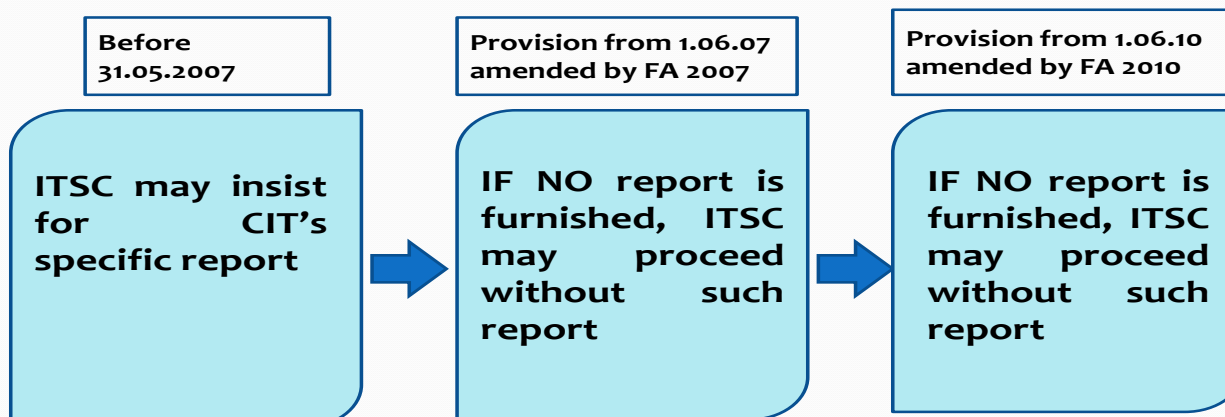
Report by the CIT should be furnished to ITSC within 90 days of receipt of communication from the settlement commission.

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## SECTION 245D(3) proviso

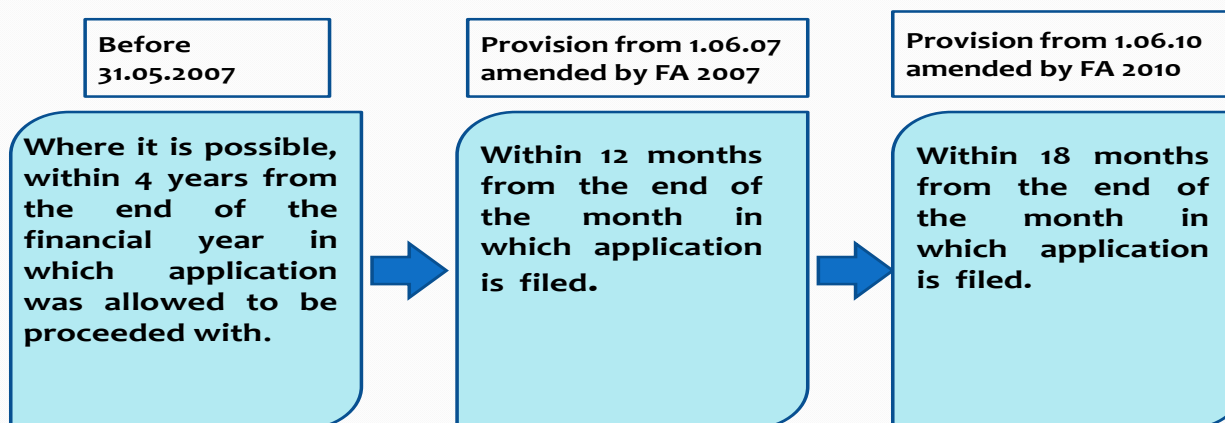
*ITSC can proceed if CIT's report is not received.*



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## SECTION 245D(4A)

*Time Limit for Passing Order u/s.245D(4)*



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**SECTION 245D(6A)***Interest Payable on tax payable as per order u/s.245D(4)*

Before  
31.05.2007

15% p.a. from the expiry of 35 days of receipt of order.

Provision from 1.06.07  
amended by FA 2007

1.25% p.m. or part of a month from the expiry of 35 days of receipt of order.

Provision from 1.06.10  
amended by FA 2010

1.25% p.m. or part of a month from the expiry of 35 days of receipt of order.

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**SECTION 245E***Reopening of Completed Proceedings*

Before  
31.05.2007

If ITSC opines that for proper disposal it is necessary, it may order reopening of completed proceedings.

Provision from 1.06.07  
amended by FA 2007

There is no such power for ITSC

Provision from 1.06.10  
amended by FA 2010

There is no such power for ITSC

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## SECTION 245F proviso

*Period up to which exclusive jurisdiction by SC in specific cases*

Before  
31.05.2007

NO specific provision.

However, it is implied that it is upto the final order u/s.245D(4)

Provision from 1.06.07  
amended by FA 2007

In a case of rejection - up to the date of order;

In case of invalid application - up to the date of declaration of the application as invalid.

Provision from 1.06.10  
amended by FA 2010

In a case of rejection - up to the date of order;

In case of invalid application - up to the date of declaration of the application as invalid.

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## SECTION 245H

*Restriction on granting of immunity from prosecution for offence under IPC or any Central Act*

Before  
31.05.2007

The ITSC had power to grant immunity from prosecution for offence under IT, WT, IPC or any Other Central Act

Provision from 1.06.07  
amended by FA 2007

The ITSC has power to grant immunity from prosecution for offence under IT & WT Acts. Power of granting immunity for offences under IPC or any other Central Act is removed

Provision from 1.06.10  
amended by FA 2010

The ITSC has power to grant immunity from prosecution for offence under IT & WT Acts. Power of granting immunity for offences under IPC or any other Central Act is removed

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## SECTION 245HA

### *Abatement of Proceeding*

Before  
31.05.2007

There was no provision for abatement of proceeding by ITSC

Provision from 1.06.07  
amended by FA 2007

Under various situations the settlement appln. abates

Provision from 1.06.10  
amended by FA 2010

Under various situations the settlement appln. abates

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## SECTION 245HAA

### *Allowing of Tax Paid in the Cases Abated*

Before  
31.05.2007

No provision for abatement of the application existed

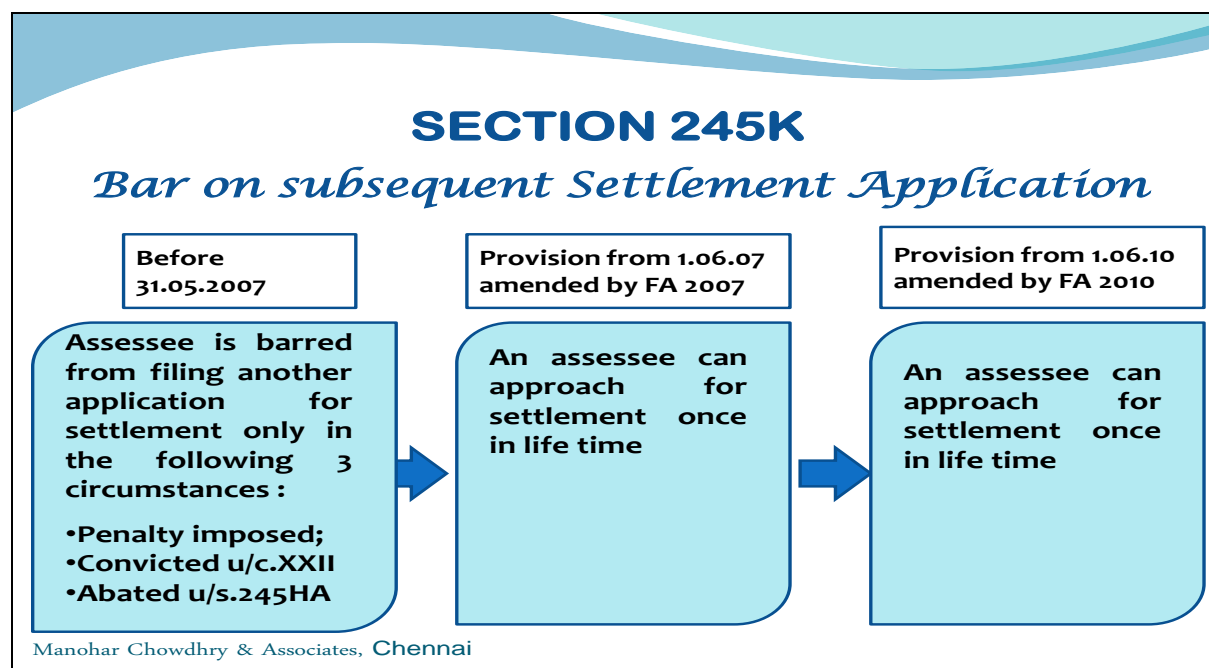
Provision from 1.06.07  
amended by FA 2007

The AO shall allow credit for taxes paid towards settlement if a case that has got abated and the proceeding is restored for assessment.

Provision from 1.06.10  
amended by FA 2010

The AO shall allow credit for taxes paid towards settlement if a case that has got abated and the proceeding is restored for assessment.

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#### PROFILE OF CA. T.N. MANOHARAN

CA, T.N. Manoharan is the recipient of "Padma Shri" award from the President in 2010. CA. Manoharan served as the President in 2006-07 of the Institute of Chartered Accountants of India (ICAI) set up under an Act of Parliament. He has authored books for professionals and students on Indian tax law. He is an acknowledged teacher. At the helm of affairs in ICAI, CA. Manoharan was actively involved in many initiatives such as preparation of the road map for transition of the Government accounting to accrual system; Convergence with IFRS in India; accounting reforms with reference to Local Bodies; making reforms in the CA education system; infrastructure development;

5.1.3 Presentation regarding Substantive Law and Machinery Provisions by Ramesh Chander Addl DIT (Inv)

## Substantive & Machinery provisions

1

### **Who can approach ITSC: 245A(b)**

- Any applicant in whose 'case' any assessment proceedings may be pending with AO.
- Asstt. Proceedings will be deemed to have commenced from 1st day of the AY.
- Rescuwear Corporation 217 CTR 597 Kol(SB) ITSC elaborates that:
  - (a) In the case of a return filed neither processed nor noticed u/s 143(2)
  - (b) In the case of a return processed but time for 143(2) notice is over
  - (c) In the case of AYrs for which AO can take any possible actionITSC application would be maintainable.

2

**Who can not approach ITSC:245A(b)**  
**proviso & Expln.**

- (a) 147 cases, on issuance of the notice
- (b) 153A/153C ( 6 AYrs) cases, on the date of search itself
- (c) Search relevant AY (7<sup>th</sup> year asstt), on the date of search itself
- (d) 254/263/264 cases, on the date of such order of revision etc.

3

**Requirements for applications :245C**

- (1) Full & true disclosure with manner of income not disclosed before AO
- (2) Addl. tax payable to be >3 lacs
- (3) Addl. tax & interest be paid before making application(1).
- (4) Payment of prescribed fee of Rs.500/-{245C(2) & R 44C(3)}.
- (5) On date of SA intimation to AO in prescribed manner {245C(4) & R 44C(4)-FN 34BA}.
- Note: Application once filed can not be withdrawn {245C(3)}.

4

## **Procedure on receipt of application for settlement:245D**

- **New Applications:**

- (1) Notice to applicant within 7 days –why it be admitted.
- (2) Decide within 15 days of application—else will be deemed as admitted.
- (3) Calls CIT report within 30 days of SA if matter had been admitted.
- (4) CIT to submit report within 30 days of ITSC intimation.
- (5) Decides validity of SA—if CIT in time questions validity {2C}
- (6) Directs, if deemed fit, CIT to do further enquiry/investigation & report within 90 days{3}.
- (7) Examines records, evidences, reports & hears A/CIT & passes final order as ITSC deems fit{4}.

5

## **Procedure on receipt of application for settlement:245D**

- **Old Applications:**

- (1) Will be deemed as admitted on 31-07-07 if addl.tax & intt. Paid by that date.
- (2) If by the above date tax & intt.not paid-- will be deemed as rejected.
- (3) On or before 07-08-2007 to call CIT report within 30 days of communication.
- (4) On (3) timely submitted report to decide validity within 15 days{2C}.
- (5) Already admitted matter not to be settlled if addl.tax & intt. not paid by 31-07-2007.
- (6) Directs, if deemed fit, CIT to do further enquiry/investigation & report within 90 days{3}.
- (7) Examines records, evidences, reports & hears 'A'/CIT & passes final order as deems fit{4}.

6



**ITSC final 245D(4) order—  
ingredients/requirements:**

- (1) On record material to be considered by the Bench {5}.
- (2) Provides settlement terms including tax, intt, penalty & manner of payment {6}.
- (3) Provides—order void if found obtained by fraud or mis-representation {6}.

7

**Effect of final order of ITSC not being  
honoured:**

- (1) If tax not paid within 35 days of receipt, interest @15% even if ITSC extends time (6A).
- (2) If terms not being complied order may become void.
- (3) If becomes void—matters to revive w.e.f. admission to be completed by AO within 2 years of the end of FY in which becomes void {7}.

8

## **Powers of ITSC**

- (1) To attach properties as per 2<sup>nd</sup> Sch. for 6 months which is extendable as deemed fit{245DD}.
- (2) To reopen with A's consent cases completed by AO if deemed fit.—no reopening if 9 years over between end of AY & ITSC SA{245E}.
- (3) To enjoy all powers of IT authority {245F(1)}.
- (4) To enjoy exclusive jurisdiction after admission (new cases on filing) till 245D(4) order{245F(2)}
- (5) On (a) co-operation, (b) full & true disclosure & manner of earning of income—to grant immunity from penalty, prosecution under ITA/IPC/Central Acts{245H}.
  - --No immunity other than ITA/MTA in respect of new cases.
  - --No immunity from prosecution already launched on SA date.
  - --Immunities to withdraw if taxes not paid or other terms not complied{245H(1A)}.
  - --Immunities to withdraw if during ITSC proceedings concealed or gave false evidence(2).

9

## **When proceedings before ITSC abate:** **245HA**

- **New Cases:**

- (1) Failure to pass D(4) final order within 12 months of end of the month of appln.—on last day.
- (2) ITSC Rejects application—on the date of rejection.
- (3) ITSC declares application invalid—end of the month of rejection order.

- **Old Cases:**

- (1) Formally admitted cases but addl.tax & interest not paid by 31-07-2007 — on 31-07-2007.
- (2) Matters not formally admitted & addl.tax & interest not paid by 31-07-2007—on 31-07-07.
- (3) Old cases-not settled by ITSC —on 31-03-2008

10

**Bar on subsequent applications:245K**

- (1)When ITSC ordered for concealment penalty.
- (2)When after ITSC order 'A' convicted under ITA in relation to that case.
- (3)When case was sent back to AO on or after 01-06-2002.
- (4)New Case applicants can not approach ITSC for 2<sup>nd</sup> time settlement.

11

**6 Annexures**

# ANNEXURES



## **6.1 Extract From Chapter 2E of Departmental Office Procedure Manual Regarding The Income Tax Settlement Commission**

1.1 The Settlement Commission was set up in 1976, on the recommendations of the Wanchoo Committee, through Chapter-XIXA of the Act.

1.2 **Salient features :** Some of unique features characterizing its functioning are:-

- a. The commission functions independently of the Department. It settles disputes relating to tax liability totally and finally.
- b. It pronounces and sets out the final terms of settlement in the court itself.
- c. It is empowered to grant immunity from prosecution for any offence committed under the laws relating to direct taxes or under any other Central enactment. It is competent to grant immunity from imposition of any penalty under the Income Tax and Wealth –tax Acts. It can also waive interest chargeable under the various provisions of the Income Tax and Wealth-tax Acts.
- d. All proceedings before the Commission are confidential.
- e. The orders of the Commission are subject to only judicial review in terms of Articles 136 and 226 of the Constitution of India.

### **1.3 Organizational structure:-**

#### **Chairman**

The Chairman of the Commission is a statutory authority under the Income Tax and Wealth-tax Acts. He is the administrative head of the Commission. His main functions are as under:-

- i. He is the Presiding Officer of the Principal Bench and decides settlement application along with  
Other Members of Bench.
- ii. He may authorize the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or other Member of any other Bench under section 245BA of the Act.
- iii. He assigns jurisdictions to different benches of the Commission.
- iv. He transfers cases from one bench to another bench to another bench under section 245BC of the Act.
- v. In the case of difference of opinion among Members of a bench, he either hears the case himself or he refers the same for hearing to another Member.

#### **Vice Chairman**

- i. The Vice-Chairman is the Presiding Officer of the additional bench and decides settlement applications along with other members of the bench.
- ii. He ensure the efficient and smooth functioning of the additional bench.

#### **Members**

- i. The Members hear and decide settlement applications along with the Chairman/Vice-Chairman.

### **Secretary**

The Secretary is a statutory authority under the Income Tax Settlement Commission (Procedure) Rules, 1987 and Wealth-tax (Procedure) Rules, 1987. He performs both technical and administrative functions. His main functions are as under:-

- i. He scrutinizes all settlement application received and put up to him to ensure that these fulfill all the requirements laid down under the I.T. and W.T. Act. and Rules.
- ii. He may assist the Commission, if so directed, in the hearing of the settlement applications under section 245D(1) of the Income Tax Act and under section 22D(1) of the Wealth-tax Act.
- iii. He assists the Commission in dealing with misc. applications relating to recovery of taxes, grant of installments etc.
- iv. He deals with all technical matters such as revision of forms, rules, procedures etc.

### **Director of Investigation**

The Director of investigation is over-all in-charge of the work of Additional/Joint/Deputy directors of Investigation and assists the commission in passing orders under 245D(4) of the Income Tax Act and 22D(4) of the Wealth –tax Act. His main functions are as under:-

- i. He scrutinizes the annexures and statements of facts received along with settlement application.
- ii. He supervises the works of the Dy. Directors of Investigation and guides them in preparing their reports.

### **Addl. /Jt./Deputy Director of Investigation**

The Addl./Joint/Deputy Directors of Investigation make enquiries on behalf of the Commission and verify correctness of the facts stated in the annexures and statements of fact accompanying settlement applications. They prepare reports regarding facts of cases, issues to be settled etc. These reports are submitted to the Commission through the Director of Investigation.

The Powers of Settlement Commission:-

- i. The Settlement Commission has all the powers of Income Tax authorities in respect of proceedings pending before it.
- ii. It may reopen completed proceedings u/s 245E of the IT Act.
- iii. It has inherent jurisdiction to rectify any error committed by it when such error is prejudicial to a party for which that party is not responsible. However, it does not have the power to review its own order if the matter raised by the applicant has been properly considered and a decision has been taken thereon.
- iv. The Commission has the power to grant immunity from prosecution and penalty
- v. It also enjoys the power to order provisional attachment to protect the interest of revenue; the CIT concerned may take advantage of this power in appropriate cases.
- vi. It may sent a case back to the AO if the assessee does not cooperate
- vii. It may also bar subsequent applications for settlement in certain cases

viii. The Commission may waive interest permitted under the provisions of the IT Act and Rules and the circulars issued there under

**Filing of application before Settlement Commission:** Any assessee desirous of settling his cases has to make an application in Form 34B under section 245C of the Income Tax Act, 1961.

Under Section 245(7) of the Act the Commission is empowered to regulate its own procedures in all matters arising out of exercise of its powers. The Chairman may, for disposal of any particular case, constitute a special bench consisting of at least five members drawn from all benches of the Commission.

**Points to be checked:** The main points to be checked by the Commission and also the Commissioner of Income Tax concerned, are as under:-

- i. Whether the applicant has furnished the return of Income as required under part (a) of the proviso to section 245C(1).
- ii. Whether the additional amount of tax payable on income as required under part 1,00,000/- as required under part(b) of the proviso to section 245C(1).
- iii. Whether calculation of additional tax payable as shown against column (2) of the Annexure to the application is as given in the manner laid down in sub-sections (1B) to (1D) of section 245C.
- iv. In a case of search under section 132, whether the application has been filed after the expiry of 120 days from the date of seizure.
- v. Whether there is case pending before an Income Tax authority within the meaning of section 245A(b).
- vi. Whether the information against Column 10 of the application (Form 34B) is provided separately or whether it is clubbed with the information given in the Annexure to the application. If it is clubbed, it should be called for separately.
- vii. Whether the information relating to column 11 of the application is given separately or it is incorporated in the application itself? If not incorporated, it should be called for separately.
- viii. Whether the annexure to the application is accompanied by full and true statement of facts regarding the issues to the settled including terms of the statement as required in Col. 3 of the annexure.
- ix. Whether the manner in which the additional income disclosed has been derived is given as required in Col. 4 of the annexure to the application.
- x. Whether computation of total income for the year(s) for which the application is made, is given?
- xi. Whether copies of relevant accounts as required in Notes(i) ,(ii) and (iii) of the annexure to the application, are attached.
- xii. Whether full particulars of proceedings pending before Income Tax authorities are given?

**Role of CIT:** A copy of application is sent to Commissioner of Income Tax(CIT) for his report under section 245D(1) of the Act. If it is prima facie maintainable {Rule 6 of Income Tax Settlement Commission (Procedure) Rules, 1987}, the Commissioner has to furnish the report in the prescribed proforma within 45 days, u/s 245D(1) of the Act. The Commissioner of Income Tax is particularly required to comment on whether any complexity of investigation is involved and whether any proceedings are pending, The Commissioner's report should not be mechanical. He may not object to admission without application of mind.



On receipt of the Commissioner report (or even when his report is not received within the prescribed period of 45 days), the Secretary prepares a note regarding the prima facie admissibility of the case before the commission under section 245D(1) of the Act. After considering the Commissioner's report and Secretary's note, the Commission may straightway admit the application under section 245D(1) even without hearing the parties. In most cases, however, the Commission directs that the case be fixed for hearing. The application is entitled to a copy of the Commissioner's report. The latter is expected to keep a watch on the proceedings and should ensure that the Assessing Officer appears as and when necessary with the documents and case records. The Commissioner is also required to submit a report under Rule-9 of Income Tax Settlement Commission (Procedure) Rule 1997 on the statement of facts (SOF) submitted by the applicant and the facts of the case on record before the final settlement is made.

**Role and responsibility of CIT(DR):** CIT (DR) represents the Commissioner of Income Tax before the Settlement Commission and presents the view of the Income Tax department. He is not an officer of the Settlement Commission but of the Income Tax department. He, however, assists the Commission in the performance of its statutory functions. Both at the admission as well as the settlement stage, he projects the departmental points of view. It is, therefore, essential for the Assessing Officer to brief him on the facts of the case beforehand and also at the time of hearing.

**Admission of settlement application:** the question whether the settlement application filed under section 245C of the Income Tax Act, 1961 is to be admitted or not, would depend upon the facts and circumstances of each case. Order under section 245D(1) cannot be passed in violation of the principles of the natural justice. Since section 245D of the Income Tax Act, 1961, confers jurisdiction on the Commission to either proceed with a settlement application or to reject it, there is no bar on the Assessing Officer continuing with the assessment proceeding pending before him in any case merely because the assessee has preferred an application for settlement to Commission in relation to that case. The Act does not contemplate stay of assessment proceeding when the Settlement Commission is still deciding whether to proceed or not to proceed with an application. Absence of complexity of investigation would lead to rejection of an application under section 245D(1). The Commission also looks into the nature and circumstances of the case before deciding admission.

**Role of Assessing Officer:-**

- i. It is incumbent on the Assessing Officer to keep a check on payment of tax by the assessee applicant once his application is admitted by the Commission. In this regard, the Commission will forward a copy of the order under section 245D(1) and statement of facts (SOF) to him. If the applicant fails to pay tax, the AO must bring such default to the notice of the Commission.
- ii. The AO is also required to proceed with pending cases till such time as the Commission admits the case. Mere filing of an application, does not ipso facto stay the assessment proceedings pending. Section 245A and 245F of I.T. Act stipulate that if a matter has been admitted by the Commission, it will have all the powers of the Assessing Officer regarding the disputed items of Income pending before it. No other authority can assess the income once the case is admitted by the Commission.
- iii. The applicant's non-cooperation with the Department should be intimated by the CIT to CIT (DR).

- iv. The AO is required to remain present at the time of hearing of the case for admission and also for settlement, along with case records, documents and seized documents, if any. He is also required to brief the CIT (DR) before the hearing for admission and also for settlement.
- v. If Complex investigation is considered necessary, the AO should apply to the Commission through the CIT for permission to conduct such enquiry.
- vi. No appeal normally lies against the order of the Settlement Commission, However, judicial review in the High Court is possible.
- vii. If the Settlement Commission's order contains a factual error, the AO should approach the CIT(DR) through his CIT to file a miscellaneous petition before the Commission to rectify the same.

**Final order of settlement:** After passing an order under section 245D(1) of the Act allowing the settlement application to be proceeded with, the Settlement Commission calls for the Commissioner's further report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997. This rule requires that the annexure to the application, together with a copy each of the statements and other documents accompanying such annexure, is forwarded to the Commissioner of Income Tax along with a copy of the order under section 245D(1); under Rule 9. The Commissioner is then required to furnish a further report u/s 245F(2) on the matters covered by the application and any other matter relating to the case; after making such further enquiry or investigation, as necessary, within 45 days of the receipt of the said Annexures (including the statements and other documents accompanying them) or within such further period as the Commission may specify. If the Commissioner fails to furnish his report on or before the expiry of the aforesaid period, the Commission may pass appropriate orders without such report. It is necessary, in appropriate cases of higher revenue potential, to file paper books containing documentary evidence in support of the Department's point of view. The settlement is made in open court and the applicant is required to abide by the terms of settlement. While determining the terms of settlement, the Commission quantifies the demand by way of tax, penalty or interest.

## **6.2 Explanatory Notes on clauses introduced in Finance Act 2007, website <http://indiabudget.nic.in>**

**Clause 51** of the Bill seeks to amend section 206A of the Income-tax Act which relates to furnishing of quarterly return in

**Clause 53** of the Bill seeks to amend section 245A of the Income-tax Act relating to definitions under chapter XIX-A. Clause (b) of the said section provides that the definition of 'case' means any proceeding under this Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before the income-tax authority on the date on which an application under sub-section (1) of section 245C has been made. Where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause.

It is proposed to amend clause (b) of the said section so as to define case as any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made. It has also been provided therein that- (i) a proceeding of assessment or reassessment or recomputation under section 147; (ii) a proceeding of assessment or reassessment for any of the assessment years referred to in clause (b) of section 153A in case of a person referred to in section 153A or section 153C; (iii) a proceeding of assessment or reassessment for the assessment year referred to in clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C; (iv) a proceeding of making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, shall not be a proceeding for assessment for purposes of this clause.

It is further proposed to insert an explanation in the said clause (b) so as to clarify that for the purposes of the said clause; (i) a proceeding of assessment or reassessment or recomputation under section 147 shall be deemed to have commenced from the date on which notice under section 148 is issued; (ii) a proceeding of assessment or reassessment shall be deemed to have commenced on the date of initiation of search under section 132 or making of requisition under section 132A; (iii) a proceeding of making fresh assessment shall be deemed to have commenced from the date on which the order under section 254 or section 263 or section 264, setting aside or cancelling an assessment was passed; (iv) in any other case, a proceeding of assessment for an assessment year, shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.

Under the existing provisions of clause (g) of the said section, 'Vice-Chairman' has been defined to mean a Vice-Chairman of the Settlement Commission.

Sub-clause (b) of the said clause seeks to amend clause (g) of the said section so as to mean Vice-Chairman of the Settlement Commission and includes a Member who is senior amongst the Members of a Bench.

These amendments will take effect from 1st June, 2007.

**Clause 54 of the Bill seeks to amend section 245C of the Income-tax Act relating to application for settlement of cases.**

Sub-section (1) of section 245C provides that an assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled. It is provided therein that no such application shall be made unless- (a) the assessee has furnished the return of income which he is or was required to furnish under any of the provisions of this Act; and (b) the additional amount of income-tax payable on the income disclosed in the application exceeds one hundred thousand rupees.

Sub-clause (i) of the said clause seeks to substitute the proviso to the said sub-section (1) so as to provide that no such application shall be made unless-(i) the additional amount of income-tax payable on the income disclosed in the application exceeds three lakh rupees ; and (ii) such tax and the interest which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.

Sub-section (1A) of section 245C provides that for the purposes of sub-section (1) of this section and sub-sections (2A) to (2D) of section 245D, the additional amount of income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

Sub-clause (ii) of the said clause seeks to amend the said sub-section (1A), so as to omit the reference to sub-sections (2A) to (2D) of section 245D.

Under the existing provisions of sub-section (1B) of section 245C, the manner of calculation of additional amount of income tax payable in respect of the income disclosed in the application has been provided. Under the said sub-section, where the income disclosed in the application relates to only one previous year, then-

(i) if the applicant has not furnished a return in respect of the total income of that year, irrespective of whether an assessment has been made in respect of the total income of that year, then, except in a case covered by clause (iii), tax shall be calculated on the income disclosed in the application;

(ii) if the applicant has furnished a return in respect of the total income of that year, irrespective of whether or not an assessment has been made in pursuance of such return, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application;

(iii) if the proceeding pending before the income tax authority is in the nature of a proceeding for reassessment of the applicant under section 147 or by way of appeal or revision in connection with such reassessment, and the applicant has not furnished a return in respect of the total income of that year in the course of such proceeding for reassessment, tax shall be calculated on the aggregate of the total income as assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147 and the income disclosed in the application.

Sub-clause (iii) of the said clause seeks to amend the said sub-section (1B) so as to provide that where the income disclosed in the application relates to only one previous year, then- (i) if the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income; (ii) if the applicant has furnished a return in respect of the total income of that year, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income.

Under the existing provisions of sub-section (1C) of section 245C, the additional amount of income-tax payable in respect of the income disclosed in the application relating to the previous year referred to in sub-section (1B) shall be-

(a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause;

(b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;

(c) in a case referred to in clause (iii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147.

Sub-clause (iv) of the said clause seeks to amend the said sub-section (1C) so as to omit clause (c) in the said sub-section.

Sub-clause (v) of the said clause seeks to insert a new sub-section (4), so as to provide that an assessee shall, on the date on which he makes an application under sub-section (1) to 95 the Settlement Commission, also send a copy of such application to the Assessing Officer. These amendments will take effect from 1st June, 2007.

**Clause 55 of the Bill seeks to amend section 245D of the Income-tax Act relating to procedure on the receipt of application under section 245C.** Under the existing provisions of sub-section (1) of section 245D, it is provided that on receipt of an application under section 245D, the Settlement Commission shall call for a report from the Commissioner and on the basis of the material contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission, shall, where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under section 245C. It is provided therein that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

It has also been provided that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made under section 245 on or after the 1st day of July, 1995 and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

Sub-clause (i) of the said clause seeks to amend the said sub-section so as to provide that on receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with. It is also proposed to provide that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

Under the existing provisions of sub-section (2A) of section 245D, it is provided that subject to the provisions of sub-section (2B), the assessee shall, within thirty-five days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the additional amount of income-tax payable on the income disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

Sub-clause (ii) of the said clause seeks to amend sub-section (2A) to provide that where an application was made under subsection (1) of section 245C before the 1st day of June, 2007 but an order under the provisions of sub-section (1) of this section as they stood prior to their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest, is, paid on or before the 31st day of

July, 2007. It is also proposed to insert an explanation in the said sub-section to provide that- in respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall, for the purposes of sub-section (1), be deemed to be the date of order of rejection or allowing the application to be proceeded with.

Under the existing provisions of sub-section (2B) of section 245D, it is provided that if the Settlement Commission is satisfied, on an application made in this behalf by the assessee, that he is unable for good and sufficient reasons to pay the additional amount of income-tax referred to in sub-section (2A) within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments if the assessee furnishes adequate security for the payment thereof.

Sub-clause (ii) of the said clause seeks to amend sub-section (2B) to provide that the Settlement Commission shall- (i) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or (ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007, call for a report from the Commissioner, and Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

Under the existing provisions of sub-section (2C) of section 245D it is provided that where the additional amount of income tax is not paid within the time specified under sub-section (2A), then, whether or not the Settlement Commission has extended the time for payment of the amount which remains unpaid or has allowed payment thereof by installments under sub-section (2B), the assessee shall be liable to pay simple interest at fifteen per cent per annum on the amount remaining unpaid from the date of expiry of the period of thirty-five days referred to in sub-section (2A).

Sub-clause (ii) of the said clause seeks to amend sub-section (2C) to provide that where a report of the Commissioner called for under sub-section (2B) has been furnished within the period specified in that sub-section, the Settlement Commission may, on the basis of the material contained in such report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, if necessary, and shall send the copy of such order to the applicant and the Commissioner. It is proposed to provide therein that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard. It is also proposed to provide that where the Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

Under the existing provisions of sub-section (2D) of section 245D it is provided that where the additional amount of income tax referred to in sub-section (2A) is not paid by the assessee within the time specified under that sub-section or extended under sub-section (2B), as the case may be, the Settlement Commission may direct that the amount of income-tax remaining unpaid, together with any interest payable thereon under sub-section (2C), be recovered and any penalty for default in making payment of such additional amount may be imposed and recovered, in accordance with the provisions of Chapter XVII, by the Assessing Officer having jurisdiction over the assessee.

Sub-clause (ii) of the said clause seeks to amend sub-section (2D) to provide that where an application was made under subsection (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood prior to their amendment by the Finance Act, 2007, allowing the application to have been proceeded with has been passed before the 1st day of June, 2007 but an order under subsection (4) was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with if the additional tax on the income disclosed in such application and the interest, is, notwithstanding any extension of time granted by the Settlement Commission, not paid on or before the 31st day of July, 2007.

Under the existing provisions of sub-section (3) of section 245D it is provided that where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the

Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

Sub-clause (iii) of the said clause seeks to amend sub-section (3) to provide that the Settlement Commission in respect of – (i) an application which has not been declared invalid under subsection (2C); or (ii) an application referred to in sub-section (2D), which has been allowed to be further proceeded with under that sub-section, may call for the records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission. It is also proposed to provide therein that where the Commissioner does not furnish his report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

Under the existing provisions of sub-section (4) of section 245D it is provided that after examination of the records and the report of the Commissioner received under sub-section (1), and the report, if any, of the Commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under sub-section (1) or sub-section (3).

Sub-clause (iii) of the said clause seeks to amend sub-section (4) of the said section to provide that after examination of the record and the report of the Commissioner, if any, furnished under - (i) sub-section (2B) or sub-section (3), or (ii) the provisions of sub-section (1) as they stood prior to their amendment by the Finance Act, 2007, and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the applicant, but referred to in the report of the Commissioner.

Under the existing provisions of sub-section (4A) of section 245D it is provided that in every application allowed to be proceeded with under sub-section (1), the Settlement Commission shall, where it is possible, pass an order under sub-section (4) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with. Sub-clause (iii) of the said clause seeks to amend sub-section (4A) of the said section to provide that the Settlement Commission shall pass an order under sub-section (4) - (i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008; (ii) in respect of an application made on or after 1st day of June, 2007, within nine months from the end of the month in which the application was made.

These amendments will take effect from 1st June, 2007.

Sub-section (6A) of the said section provides for liability of the assessee to pay simple interest at fifteen per cent. per annum on the amount remaining unpaid. It is proposed to change the method of calculation of interest on a monthly basis. Sub-clause (iv) of the said clause seeks to provide that simple interest at the rate of one and one-fourth per cent. is to be calculated for every month or part of a month instead of fifteen per cent. per annum.

This amendment will take effect from the 1st day of April, 2008.

**Clause 56 of the Bill seeks to amend section 245DD of the Income-tax Act** relating to power of the Settlement Commission to order provisional attachment to protect revenue.

Under the existing provisions of sub-section (2) of section 245DD, it is provided that every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1). It has also been provided therein that the Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as it thinks fit, so, however, that the total period of extension shall not in any case exceed two years. It is proposed to amend the said sub-section so as to omit the condition that the total period of extension shall not in any case exceed two years. This amendment is of consequential in nature.

This amendment will take effect from 1st June, 2007.

**Clause 57 of the Bill seeks to amend section 245E of the Income-tax Act** relating to power of the Settlement Commission to reopen completed proceedings. Under the existing provisions of the said section, it is provided that if the Settlement Commission is of the opinion that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also. It has also been provided therein that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds nine years . It is proposed to amend the said section so as to provide that the provisions of this section shall not be applicable in respect of a case, where an application is made on or after 1st June, 2007.

This amendment will take effect from 1st June, 2007.

**Clause 58 of the Bill seeks to amend section 245F of the Income-tax Act** relating to power and procedure of the Settlement Commission.

Under the existing provisions of sub-section (2) of section 245F, it is provided that where an application made under section 245C has been allowed to be proceeded with under section 245D, 97 the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case.

It is proposed to amend the said sub-section by inserting a proviso so as to provide that where an application has been made under section 245C on or after the 1st day of June, 2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made. It also proposed to provide in the said sub-section that where- (i) an application made on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 245D; or (ii) an application, is not allowed to be proceeded with under the said sub-section (2A) of section 245D, or, as the case may be, is declared invalid under sub-section (2B) of that section; or (iii) an application is not allowed to be further proceeded with under sub-section (2D) of section 245D, the Settlement Commission, in respect of such application shall have such exclusive jurisdiction up to the date on which the application is rejected, or, not allowed to be proceeded with, or, declared in valid, or, not allowed to be further proceeded with as the case may be.

This amendment will take effect from 1st June, 2007.

**Clause 59 of the Bill seeks to amend section 245H of the Income-tax Act** relating to power of the Settlement Commission to grant immunity from prosecution and penalty.



Under the existing provisions of sub-section (1) of section 245H, it is provided that the Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act for the time being in force and also from the imposition of any penalty under this Act, with respect to the case covered by the settlement. It has also been provided therein that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C.

It is proposed to amend the said sub-section by inserting a second proviso so as to provide that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code or under any Central Act other than Income tax Act and the Wealth-tax Act, to a person who made an application for settlement under section 245C on or after the 1<sup>st</sup> day of June, 2007.

This amendment will take effect from 1st June, 2007.

**Clause 60 of the Bill seeks to insert a new section 245HA in the Income-tax Act** relating to abatement of proceedings relating to the Settlement Commission.

It is proposed to provide in sub-section (1) of the said section that where - (i) an application made under section 245-C on or after the 1st day of June, 2007 has been rejected under subsection (1) of section 245D; or (ii) an application made under section 245C has not been allowed to be further proceeded with under sub-section (2A) or under sub-section (2D) of section 245D; or (iii) an application made under section 245C has been declared as invalid under sub-section (2C) of section 245D; or (iv) in respect of any other application made under section 245C, an order under sub-section (4) of section 245D has not been passed within the time specified under sub-section (4A) of section 245D, the proceedings before the Settlement Commission shall abate on the specified date. It also proposes to insert an Explanation so as to clarify the meaning of "specified date". For the purpose of this sub-section, "specified date" means- (a) in respect of an application referred to in clause (i), the day on which the application was rejected; (b) in respect of application referred to in clause (ii), the 31st day of July, 2007; (c) in respect of application referred to in clause (iii), the last day of the month in which the application was declared invalid; (d) in respect of application referred to in clause (iv), on the date on which the time specified in sub-section (4A) expires.

It is further proposed to provide in sub-section (2) of the new section, that where a proceeding before the Settlement Commission abates, the Assessing Officer shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.

It is also proposed to provide in sub-section (3) of the new section, that for the purposes of sub-section (2), the Assessing Officer shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such material, information, inquiry and evidence had been produced before the Assessing Officer or held or recorded by him in the course of the proceedings before him.

It is also proposed to provide that in sub-section (4) of said section that for the purposes of the time-limit under sections 149, 153, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under sections 243 or section 244 or, as the case may be, section 244A, for making the assessment or reassessment under sub-section (2), the period commencing on and from the date of the application to the Settlement Commission under section 245C and ending with "specified date" referred to in sub-section (1) shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under sub-section (2) of section 186, the period aforesaid shall, likewise, be excluded.

These amendments will take effect from 1st June, 2007.

**It also seeks to insert a new section 245HAA in the Income tax Act** relating to credit for the tax paid in case of abatement of proceedings.

It is proposed to provide in the said section that where an application made under section 245C is rejected under subsection (1) of section 245D or is not allowed to be proceeded with under sub-section (2A) of section 245D or is declared invalid under sub-section (2C) of section 245D or has not been allowed to be further proceeded with under sub-section (2D) of section 245D or an order under section (4) of section 245D has not been passed before the time provided under sub-section (4A) of section 245D, the Assessing Officer shall, in making the assessment, or, as the case may be, completing the proceedings in accordance with the provisions of section 245HA, allow the credit for the tax and interest paid before making the application or during the pendency of the case before the Settlement Commission.

This amendment will take effect from 1st June, 2007.

**Clause 61 of the Bill seeks to amend section 245K of the Income-tax Act** relating to bar on subsequent application for settlement in certain cases.

Under the existing provisions of the said section, it is provided that where- (i) an order of settlement passed under sub-section (4) of section 245D provides for the imposition of a penalty on the person who makes the application under section 245C for settlement, on the ground of concealment of particulars of his income; or(ii)after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case; or (iii) the case of such person is sent back to the Assessing Officer by the Settlement Commission under section 245HA, then, he shall not be entitled to apply for settlement under section 245C in relation to any other matter.

It is proposed to amend the said section by substituting the existing clauses with new sub-sections (1) and (2) thereto.

The proposed new sub-section (1) provides that where- (i) an order of settlement passed under sub-section (4) of section 245D provides for the imposition of a penalty on the person who makes the application under section 245C for settlement, on the ground of concealment of particulars of his income; or (ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case, or (iii) the case of such person was sent back to the Assessing Officer by the Settlement Commission on or before the 1st day of June,2002, then, he shall not be entitled to apply for settlement under section 245C in relation to any other matter.

The proposed sub-section (2) provides that where a person has made an application under section 245C on or after the 1<sup>st</sup> June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 245D, such person shall not be subsequently entitled to make an application under section 245C.

These amendments will take effect from 1st June, 2007.

**Clause 75 of the bill seeks to amend section 22A of the Wealth-tax relating to definitions** under chapter V-A.

Clause (b) of the said section provides that the definition of 'case' means any proceeding under Wealth-tax Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before wealth-tax authority on the date on which an application under sub-section (1) of section 22C has been made. Where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a

proceeding pending within the meaning of this clause. It is proposed to amend clause (b) of the said section so as to define case as any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 22C is made. It has also been provided therein that— (i) a proceeding of assessment or reassessment under section 17; (ii) a proceeding of making fresh assessment in pursuance of an order under section 23A or under section 24 or under sub-section (1) or sub-section (2) of section 25 setting aside or cancelling an assessment; (iii) a proceeding of assessment or reassessment which may be initiated on the basis of a search under section 37A or requisition under section 37B, shall not be a proceeding for assessment for purposes of this clause. It is further proposed to insert an explanation in the said clause (b) so as to clarify that for the purposes of the said clause (i) a proceeding of assessment or reassessment referred to in clause (i) of the proviso shall, in a case where a notice under section 17 is not issued on the basis of search under section 37A or requisition under section 37B, be deemed to have commenced from the date on which notice under section 17 is issued; (ii) a proceeding of making fresh assessment referred to in clause (ii) of the proviso shall be deemed to have commenced from the date on which the order under section 23A or section 24 or under sub-section (1) or sub-section (2) of section 25, setting aside or cancelling an assessment was passed; (iii) a proceeding of assessment or reassessment referred to in clause (iii) of the proviso shall be deemed to have commenced on the date of initiation of the search under section 37A or making of requisition under section 37B; (iv) a proceeding of assessment for an assessment year, other than the proceeding of assessment or reassessment referred to in clause (i) or clause (ii) or clause (iii) of the proviso shall be deemed to have commenced from the 1st day of the assessment year. and concluded on the date on which the assessment is made.

Under the existing provisions of the clause (f) of the said section, 'Vice-Chairman' has been defined to mean a Vice- Chairman of the Settlement Commission.

Sub-clause (b) of the said clause seeks to amend clause (g) of the said section so as to mean Vice-Chairman of the Settlement Commission and includes a Member who is senior amongst the Members of a Bench. These amendments will take effect from 1st June, 2007.

**Clause 76** of the Bill seeks to amend section 22C of the Wealth-tax Act relating to application for settlement of cases

Sub-section (1) of section 22C provides that an assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his wealth which has not been disclosed before the Assessing Officer, the manner in which such wealth has been derived, the additional amount of wealth tax payable on such wealth and such other particulars as may be prescribed, to the Settlement Commission to have the case settled. It is provided therein that no such application shall be made unless the assessee has furnished the return of wealth which he is or was required to furnish under any of the provisions of this Act.

Sub-clause (i) of the said clause seeks to substitute the proviso to the said sub-section (1) so as to provide that no such application shall be made unless such wealth-tax and the interest which would have been paid under the provisions of this Act had the wealth disclosed in the application been declared in the return of net wealth before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application .

Sub-section (1A) of section 22C provides that for the purposes of sub-section (1) of this section and sub-sections (2A) to (2D) of section 22D, the additional amount of wealth-tax payable in respect of the wealth disclosed in an application made under subsection (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

Sub-clause (ii) of the said clause seeks to amend the said sub-section (1A), so as to omit reference to sub-section (2A) to (2D) of section 22D. Under the existing provisions of sub-section (1B) of section 22C, the manner of

calculation of additional amount of wealth tax payable in respect of the wealth disclosed in the application has been provided.

Under the said sub-section, where the wealth disclosed in the application relates to only one previous year, then— (i) if the applicant has not furnished a return in respect of the net-wealth of that year, irrespective of whether an assessment has been made in respect of the net wealth of that year, then, except in a case covered by clause (iii), tax shall be calculated on the wealth disclosed in the application; (ii) if the applicant has furnished a return in respect of the net wealth of that year, irrespective of whether or not an assessment has been made in pursuance of such return, tax shall be calculated on the aggregate of the net wealth returned and the wealth disclosed in the application; (iii) if the proceeding pending before the wealth-tax authority is in the nature of a proceeding for reassessment of the applicant under section 17 or by way of appeal or revision in connection with such reassessment, and the applicant has not furnished a return in respect of the net wealth of that year in the course of such proceeding for reassessment, tax shall be calculated on the aggregate of the net wealth as assessed in the earlier proceeding for assessment under section 16 or section 17 and the wealth disclosed in the application.

Sub-clause (iii) of the said clause seeks to amend the said sub-section (1B) so as to provide that where the wealth disclosed in the application relates to only one previous year, then— (i) if the applicant has not furnished a return in respect of the net wealth of that year, then, tax shall be calculated on the wealth disclosed in the application as if such wealth were the net wealth; (ii) if the applicant has furnished a return in respect of the net wealth of that year, tax shall be calculated on the aggregate of the net wealth returned and the wealth disclosed in the application as if such aggregate were the net wealth.

Under the existing provisions of sub-section (1C) of section 22C, the additional amount of wealth-tax payable in respect of the wealth disclosed in the application relating to the previous year referred to in sub-section (1B) shall be— (a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause; (b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the net wealth returned for that year; (c) in a case referred to in clause (iii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the net wealth assessed in the earlier proceeding for assessment under section 16 or section 17.

Sub-clause (iv) of the said clause seeks to amend the said sub-section (1C) so as to omit clause (c) in the said sub-section.

Sub-clause (v) of the said clause seeks to insert a new subsection (4), so as to provide that an assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also send a copy of such application to the Assessing Officer.

These amendments will take effect from 1st June, 2007.

**Clause 77 of the Bill seeks to amend section 22D of Wealth tax Act relating to procedure on the receipt of application under section 22C.**

Under the existing provision of sub-section (1) of section 22D, it is provided that on receipt of an application under section 22C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission, shall, where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under section 22C. It is provided therein that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard. It has also been provided that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made under section 22C on or after the date on which the Finance (No. 2) Act, 1991 receives the assent of the President and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

Sub-clause (i) of the said clause seeks to amend the said sub-section so as to provide that on receipt of an application under section 22C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with. It is also proposed to provide that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

Under the existing provisions of sub-sections (2A) of section 22D, it is provided that subject to the provisions of sub-section (2B), the assessee shall, within thirty-five days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the additional amount of wealth-tax payable on the wealth disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

The sub-clause (ii) of the said clause seeks to amend subsection (2A) to provide that where an application was made under sub-section (1) of section 22C before the 1st day of June, 2007 but an order under the provisions of sub-section (1) of this section as they stood prior to their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the wealth disclosed in such application and the interest, is, paid on or before the 31st day of July, 2007.

It is also proposed to insert an explanation in the said sub-section to provide that in respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall, for the purposes of sub-section (1), be deemed to be the date of order of rejection or allowing the application to be proceeded with.

Under the existing provisions of sub-section (2B) of section 22D, it is provided that if the Settlement Commission is satisfied, on an application made in this behalf by the assessee, that he is unable for good and sufficient reasons to pay the additional amount of wealth-tax referred to in sub-section (2A) within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments if the assessee furnishes adequate security for the payment thereof.

The sub-clause (ii) of the said clause seeks to amend subsection (2B) to provide that the Settlement Commission shall—(i) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or (ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007, call for a report from the Commissioner, and Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

Under the existing provisions of sub-section (2C) of section 22D it is provided that where the additional amount of wealth-tax is not paid within the time specified under sub-section (2A), then, whether or not the Settlement Commission has extended the time for payment of the amount which remains unpaid or has allowed payment thereof by instalments under sub-section (2B), the assessee shall be liable to pay simple interest at fifteen per cent. per annum on the amount remaining unpaid from the date of expiry of the period of thirty-five days referred to in sub-section (2A).

The sub-clause (ii) of the said clause seeks to amend subsection (2C) to provide that where a report of the Commissioner called for under sub-section (2B) has been furnished within the period specified in that sub-section, the Settlement Commission may, on the basis of the material contained in such report and within period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, if necessary, and shall send the copy of such order to the applicant and the Commissioner. It is proposed to provide therein that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard. It is also proposed to provide that where the Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

Under the existing provisions of sub-section (2D) of section 22D it is provided that where the additional amount of wealth-tax referred to in sub-section (2A) is not paid by the assessee within the time specified under that sub-section or extended under subsection (2B), as the case may be, the Settlement Commission may direct that the amount of wealth-tax remaining unpaid, together with any interest payable thereon under sub-section (2C), be recovered and any penalty for default in making payment of such additional amount may be imposed and recovered, in accordance with the provisions of Chapter VII, by the Assessing Officer having jurisdiction over the assessee.

The sub-clause (ii) of the said clause seeks to amend subsection (2D) to provide that where an application was made under sub-section (1) of section 22C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section as they stood prior to their amendment by the Finance Act, 2007 allowing the application to have been proceeded with has been passed before the 1st day of June, 2007 but an order under subsection (4) was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with if the additional tax on the wealth disclosed in such application and the interest, is, notwithstanding any extension of time granted by the Settlement Commission, not paid on or before the 31<sup>st</sup> day of July, 2007.

Under the existing provisions of sub-section (3) of section 22D it is provided that where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

Sub-clause (iii) of the said clause seeks to amend sub-section (3) to provide that the Settlement Commission in respect of – (i) an application which has not been declared invalid under subsection (2C); or (ii) an application referred to in sub-section (2D), which has been allowed to be further proceeded with under that sub-section, may call for the records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission. It is also proposed to provide therein that where the Commissioner does not furnish his report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

Under the existing provisions of sub-section (4) of section 22D it is provided that after examination of the records and the report of the Commissioner received under sub-section (1), and the report, if any, of the Commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorized in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under sub-section (1) or sub-section (3).

Sub-clause (iii) of the said clause seeks to amend sub-section (4) of the said section to provide that after examination of the record and the report of the Commissioner, if any, furnished under - (i) sub-section (2B) or sub-section (3), or (ii) the provisions of sub-section (1) as they stood prior to their amendment by the Finance Act, 2007, and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the applicant, but referred to in the report of the Commissioner.

Under the existing provisions of sub-section (4A) of section 22D it is provided that in every application allowed to be proceeded with under sub-section (1), the Settlement Commission shall, where it is possible, pass an order under sub-section (4) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with.

Sub-clause (iii) of the said clause seeks to amend subsection (4A) of the said section to provide that the Settlement Commission shall pass an order under sub-section (4) - (i) in respect of application referred to in sub-section (2A) or subsection (2D) , on or before the 31st day of March, 2008; (ii) in respect of an application made on or after 1st day of June, 2007, within nine months from the end of the month in which the application was made. These amendments will take effect from 1st June, 2007.

Sub-section (6A) of the said section provides for liability of the assessee to pay simple interest at fifteen per cent. per annum on the amount remaining unpaid. It is proposed to change the method of calculation of interest on a monthly basis. Sub-clause (iv) of the said clause seeks to provide that simple interest at the rate of one and one-fourth per cent. is to be calculated for every month or part of a month instead of fifteen per cent. per annum. This amendment will take effect from the 1st day of April, 2008.

**Clause 78 of the Bill seeks to amend section 22DD of the Wealth-tax Act relating to power of the Settlement Commission to order provisional attachment to protect revenue.**

Under the existing provisions of sub-section (2) of section 22DD, it is provided that every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1). It has also been provided therein that the Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as it thinks fit, so, however, that the total period of extension shall not in any case exceed two years.

It is proposed to amend the said sub-section so as to omit the condition that the total period of extension shall not in any case exceed two years. This amendment is of consequential in nature.

This amendment will take effect from 1st June, 2007.

**Clause 79 of the Bill seeks to amend section 22E of the Wealth-tax Act relating to power of the Settlement Commission to reopen completed proceedings.**

Under the existing provisions of the said section, it is provided that if the Settlement Commission is of the opinion that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act by any wealth-tax authority before the application under section 22C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also. It has also been provided therein that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 22C exceeds nine years.

It is proposed to amend the said section so as to provide that the provisions of this section shall not be applicable in respect of a case, where an application is made on or after 1<sup>st</sup> June, 2007.

This amendment will take effect from 1st June, 2007.

**Clause 80 of the Bill seeks to amend section 22F of the Wealth-tax Act relating to power and procedure of the Settlement Commission.**

Under the existing provisions of sub-section (2) of section 245F, it is provided that where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 22D, have, subject to the provisions of sub-section

(3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of a wealth-tax authority under this Act in relation to the case.

It is proposed to amend the said sub-section by inserting a proviso so as to provide that where an application has been made under section 22C on or after the 1st day of June, 2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made. It also proposes to provide in the said sub-section that where- (i) an application made on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 22D; or (ii) an application, is not allowed to be proceeded with under said sub-section (2A) of section 22D, or, as the case may be, is declared invalid under sub-section (2B) of that section; or (iii) an application is not allowed to be further proceeded with under section (2D) of section 22D, the Settlement Commission, in respect of such application shall have such exclusive jurisdiction upto the date on which the application is rejected, or, not allowed to be proceeded with, or, declared in valid, or, not allowed to be further proceeded with as the case may be.

This amendment will take effect from 1st June, 2007.

**Clause 81 of the Bill seeks to amend section 22H of the Wealth-tax Act relating to power of the Settlement Commission to grant immunity from prosecution and penalty.**

Under the existing provisions of sub-section (1) of section 22H, it is provided that the Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 22C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his wealth and the manner in which such wealth has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act for the time being in force and also (either wholly or in part) from the imposition of any penalty under this Act, with respect to the case covered by the settlement. It has also been provided therein that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 22C.;

It is proposed to amend the said sub-section by inserting a second proviso so as to provide that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code or under any Central Act other than Income tax Act and the Wealth-tax Act to a person who made an application for settlement under section 22C on or after the 1<sup>st</sup> day of June, 2007.

This amendment will take effect from 1st June, 2007.

**Clause 82 of the Bill seeks to insert a new section 22HA in the Wealth-tax Act relating to abatement of proceedings relating to the Settlement Commission.**

It is proposed to provide in sub-section (1) of the said section that where- (i) an application made under section 22C on or after 1st day of June, 2007 has been rejected under sub-section 105 (1) of section 22D; or (ii) an application made under section 22C has not been allowed to be further proceeded with under subsection (2A) or under sub-section (2D) of section 22D; or (iii) an application made under section 22C has been declared as invalid under sub-section (2C) of section 22D; or (iv) in respect of any other application made under section 22C, an order under sub-section (4) of section 22D has not been passed within the time specified under sub-section (4A) of section 22D, the proceedings before the Settlement Commission shall abate on the specified date. It also proposes to insert an explanation so as to clarify the meaning of "specified date". For the purpose of this sub-section, "specified date" means- (a) in respect of an application referred to in clause (i), the day on which the application was rejected; (b) in respect of application referred to in clause (ii), the 31st day of July, 2007; (c) in respect of application referred to in clause (iii), the last day of the month in which the application was declared invalid; (d) in respect of application referred to in clause (iv), on the date on which the time limitation specified in sub-section (4A) expires.



It is further proposed to provide in sub-section (2) of the new section, that where a proceeding before the Settlement Commission abates, the Assessing Officer shall dispose of the case in accordance with the provisions of this Act as if no application under section 22C had been made.

It is also proposed to provide in sub-section (3) of the new section, that for the purposes of sub-section (2), the Assessing Officer shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before the Assessing Officer or held or recorded by him in the course of the proceedings before him.

It is also proposed to provide that in sub-section (4) of said section that for the purposes of the time-limit under sections 17A, 32 and 35 and for the purposes of payment of interest under section 34A in a case referred to in sub-section (2), the period commencing on and from the date of the application to the Settlement Commission under section 22C and ending with "specified date" referred to in sub-section (1) shall be excluded.

These amendments will take effect from 1st June, 2007.

It also seeks to insert a new section 22HAA in the Wealth tax Act relating to credit for the tax paid in case of abatement of proceedings.

It is proposed to provide in the said section that where an application made under section 22C is rejected under sub-section (1) of section 22D or is not allowed to be proceeded with under sub-section (2A) of section 22D or is declared invalid under sub-section (2C) of section 22D or has not been allowed to be further proceeded with under sub-section (2D) of section 22D or an order under sub-section (4) of section 22D has not been passed before the time provided under sub-section (4A) of section 22D, the Assessing Officer shall, in making the assessment, or, as the case may be, completing the proceedings in accordance with the provisions of section 22HA, allow the credit for the tax and interest paid before making the application or during the pendency of the case before the Settlement Commission.

This amendment will take effect from 1st June, 2007.

**Clause 83 of the Bill seeks to substitute section 22K of the Wealth-tax Act relating to bar on subsequent application for settlement in certain cases.**

Under the existing provisions of the said section, it is provided that where- (i) an order of settlement passed under sub-section (4) of section 22D provides for the imposition of a penalty on the person who made the application under section 22C for settlement, on the ground of concealment of particulars of his wealth; or (ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter VIII in relation to that case; or (iii) the case of such person is sent back to the Assessing Officer by the Settlement Commission under section 22HA, then, he shall not be entitled to apply for settlement under section 22C in relation to any other matter.

It is proposed to amend the said section by substituting the existing clauses with new sub-sections (1) and (2) thereto. The proposed sub-section (1) provides that where- (i) an order of settlement passed under sub-section (4) of section 22D provides for the imposition of a penalty on the person who made the application under section 22C for settlement, on the ground of concealment of particulars of his wealth; or (ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter VIII in relation to that case, or (iii) the case of such person was sent back to the Assessing Officer by the Settlement Commission on or before the 1st day of June, 2002, then, he shall not be entitled to apply for settlement under section 22C in relation to any other matter. The proposed sub-section (2) provides that where a person has made an application under section 22C on or after the 1<sup>st</sup> June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 22D, such person shall not be subsequently entitled to make an application under section 22C. These amendments will take effect from 1st June, 2007.

### **6.3 Explanatory Notes on clauses introduced in Finance Act 2010, wef. 15<sup>th</sup> June 2010.**

The conditions for filling of an application before the Settlement Commission and the time for disposal of an application by the Settlement Commission are proposed to be modified. The changes proposed are as under:-

- A. Under the existing provisions of section 245(b), the term “case” in relation to which an application can be made is defined as any proceeding for assessment, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application is made to the Settlement Commission. However, it excludes, among others, proceedings for assessment or reassessment resulting from a search or as a result of requisition of books of account or other documents of any assets, initiated under the Act.

It is now proposed to include proceedings for assessment or reassessment resulting from search or as a result of requisition of books of account or other documents or any assets, within the definition of a “case” which can be admitted by the Settlement Commission.

It is also proposed to amend the Explanation of section 245A(b) to specify the data on which the proceedings for assessment or reassessment shall be deemed to have commenced and concluded in the case of a person whose income is being assessed or reassessed as a result of search or as a result of requisition of books of account or other documents or any assets.

Similarly, consequential amendments are also proposed to be made in section 22A of the Wealth tax Act.

- B. Under the existing provisions of section 245C of the Income Tax Act, an application can be filed before the Settlement Commission, if the additional amount of Income Tax payable on the income disclosed in the application exceeds three lakhs rupees.

It is proposed to substitute the proviso to section 245C, so as to provide that an application can be filed before the Settlement Commission, in case where proceedings for assessment or reassessment have been initiated as a result of search or as a result of requisition of books of account or other documents or any assets, if the additional amount of Income Tax payable on the Income disclosed in the application exceeds fifty lakh rupees. It is further proposed that, in other cases, an application can be made before the Settlement Commission, if the additional amount of Income Tax payable on the Income disclosed in the application exceeds ten lakh rupee.

These amendments are proposed to take effect from 1<sup>st</sup> June, 2010

- C. Under the existing provisions of section 245D(4A) of the Income Tax Act, the Settlement Commission shall pass an order within twelve months from the end of the month in which the application was made.

It is proposed to amend clause (ii) of sub-section (4A) so as to provide that the Settlement Commission shall, in respect of an application filed on or after 1<sup>st</sup> June, 2007 but before 1<sup>st</sup> June, 2010, pass an order within eighteen months from the end of the month in which the application is made.

It is further proposed to insert a new clause (iii) in sub-section (4A) so as to provide that the Settlement Commission shall, in respect of an application made on or after 1<sup>st</sup> June, 2010, pass an order within eighteen months from the end of the month in which the application is made.

Consequential amendments on similar lines are proposed to be made in section 22D of the Wealth tax Act.

These amendments are proposed to take effect from 1<sup>st</sup> June, 2010.

**7 Some Background Material on IRS Settlement Procedures in UK and USA**

**IRS  
Settlement Procedures  
in  
UK and USA**



## 7.1 UK IRS's Hansard Procedure for Settlement- Overview

Downloads from [www.taxconcern.CO.UK/COP9.htm/](http://www.taxconcern.CO.UK/COP9.htm/)

### Introduction

You may be familiar with the term, the “Hansard” procedure. For those who are not, this is a process by which the Inland Revenue offers a taxpayer suspected of serious tax fraud an opportunity to confess to all, if any, of the regularities in their tax affairs. The term “Hansard” is used, because the practice of the Board of Inland Revenue is set out in a statement by the Chancellor of the Exchequer in the Parliamentary Hansard records.

Hansard is a long established concept and its origins can be traced back to the latter part of the First World War. It first appears in Hansard by way of a lengthy written answer by Sir W. Johnson Hicks, in the House of Commons 19 July 1923. Over the years there have only been minor changes and the Hansard practice has survived a number of challenges in the Courts.

From time to time the Chancellor of the day updates the Hansard statement to reflect the latest practice of the Inland Revenue. This article reports that the Chancellor has recently made a revised statement; it looks at the main changes and the reasons behind these. It also announces changes in the Inland Revenue's Code of Practice number 9, which provides further information about these types of investigations.

### Background

The Hansard procedure was last updated by the then Chancellor, the Rt Hon John Major M.P., on 18th October 1990. In answering a Parliamentary Question about the practice of the Board of Inland Revenue with regard to instituting criminal proceedings in case of suspected tax fraud, he gave the following statement: “The practice of the Board of Inland Revenue in cases of tax fraud is as follows:- The Board may accept a money settlement instead of instituting criminal proceedings in respect of fraud alleged to have been committed by a taxpayer. They can give no undertaking that they will accept a money settlement and refrain from instituting criminal proceedings even if the case is one in which the taxpayer has made a full confession and has given full facilities for investigation of the facts. They reserve to themselves full discretion in all cases as to the course they pursue.

But in considering whether to accept a money settlement or to institute criminal proceedings, it is their practice to be influenced by the fact that the taxpayer has made a full confession and has given full facilities for investigation into his affairs and for examination of such books, papers, documents or information as the Board may consider necessary”. This statement includes an indication that a taxpayer who makes a full confession and who co-operates fully with the Inland Revenue during their investigations can expect that the matter will be dealt with on a civil basis, rather than criminal proceedings being taken against them. But the statement is not explicit on the matter and the taxpayer is left with no absolute assurance that the Board of the Inland Revenue will not institute criminal proceedings even in these circumstances.

### Statements by the Lords

More recently, the House of Lords has considered the case of “R v Allen”. In this case the appellant claimed that the admission into evidence of statements made in response to the Hansard procedure breached his right to a fair trial under Article 6(1) of the European Convention of Human Rights. This, he claimed, was because he had been subjected to an inducement at the time when the statements were made. The inducement in question was said to be the assurance implicit in the Hansard

statement that if the taxpayer makes a full confession criminal proceedings would not be instituted against him.

There was, however, a flaw in the argument advanced by the appellant. As Lord Hutton explained:

“To the extent that there was an inducement contained in the Hansard statement, the inducement was to give true and accurate information to the Revenue, but the accused did not respond to that inducement and instead of giving true and accurate information gave false information. Therefore, in my opinion, the appellant’s argument that he was induced by the hope of non-institution of criminal proceedings held out by the Revenue to provide the schedule and that its provision was, therefore, involuntary is invalid”.

In other words, the whole basis of the appellant’s argument was founded on a false premise. The facts of the appellant’s case did not engage the legal argument advanced on his behalf because the appellant had not made full disclosure in accordance with the terms of the Hansard statement.

Lord Hutton pointed out that the position would have been different if the appellant had made full disclosure to the Inland Revenue in response to the Hansard statement.

“If, in response to the Hansard statement, the appellant had given true and accurate information which disclosed that he had earlier cheated the Revenue and had been prosecuted for that earlier dishonesty, he would have had a strong argument that the criminal proceedings were unfair and an even stronger argument that the Crown should not rely on evidence of his admission, but that is the reverse of what actually occurred”.

### **A Full Confession**

The conclusion to be drawn from Lord Hutton’s remarks is that a taxpayer invited under the Hansard procedure to make a full confession, who unlike the appellant in this case actually did so, would be hard done by if the Revenue then subsequently prosecuted him or her anyway. This would be particularly true if the Revenue used his confession as evidence in court.

These remarks are significant in terms of the Hansard statement. The Board of the Inland Revenue had previously reserved to itself full discretion as to the course of action it would take in any case. Lord Hutton took the view, however, that in cases of a full confession under Hansard, the Revenue would be unfair to prosecute, effectively placing a limit on the full discretion of the Revenue in this matter.

As significant as these points are, in practical terms there is no record of any case in which a taxpayer who has made a full confession under Hansard being prosecuted for these offences later. The substantive point is how assured the taxpayer can be that the Revenue will not prosecute in these circumstances.

It is important to stress that the Hansard procedure invites a full and complete confession. Deliberate failure to disclose errors or omissions may result in criminal prosecution. Depending upon the facts of the particular case and the admissibility of evidence before the Courts, it is possible that someone who only admits to part of the irregularities could face criminal charges not only in relation to the matters undisclosed or misrepresented but also the matters disclosed.

**Full Co-operation** A further element to be taken into account according to the previous version of Hansard is whether the taxpayer had given full co-operation to the Revenue during the investigation. This includes the giving of full facilities for investigation into his affairs and for examination of such books, papers, documents or information as the Board may consider necessary. A taxpayer could conclude from this, that even in cases of a full confession, if the right amount of cooperation is not offered, then he or she remains at the risk of prosecution.

Again in practice there have been no cases of the Revenue prosecuting in these circumstances. It has considered instead the fullness of the confession made under Hansard when deciding on subsequent prosecution action. It is a matter for the taxpayer to decide whether or not to cooperate with the investigation and the extent of that cooperation. If the matter remains civil, the Revenue will, however, take the degree of co-operation into account in determining any penalties which may be applicable

It must however be made clear that the Board does not hold out the opportunity of Hansard indefinitely. So, for example, if a taxpayer who had been given Hansard took an unreasonable amount of time in making their full disclosure, the Inland Revenue may decide to commence its own investigation. Depending upon the information held or obtained by the Inland Revenue, this may lead at any time to the withdrawal of Hansard and the start of an investigation with a view to criminal prosecution

### **A Revised Hansard Statement**

There has been a revised statement about the Board of the Inland Revenue's policy on these matters. The response to a Parliamentary Question to the Chancellor on 7th November 2002 was:

"Further to the statement made on 18th October 1990 at column 882 by the then Chancellor, the Rt. Hon. John Major, the practice of the Board of Inland Revenue in cases of suspected serious tax fraud is as follows:-

The Board reserves complete discretion to pursue prosecutions in the circumstances it considers appropriate

Where serious tax fraud has been committed, the Board may accept a money settlement instead of pursuing a criminal prosecution.

The Board will accept a money settlement and will not pursue a criminal prosecution, if the taxpayer, in response to being given a copy of this Statement by an authorized officer, makes a full and complete confession of all tax irregularities".

The significant points to note are that a taxpayer making a full confession under this procedure may now be assured that the Inland Revenue will not pursue a criminal prosecution. The term "pursue" is used because the Revenue is a prosecuting body in its own right only in England and Wales. In Scotland and in Northern Ireland it refers cases to the Procurator Fiscal and the Director of Public Prosecutions, respectively, for their consideration.

The revised text refers to a copy of the Statement being given by an authorized officer. For these purposes, an authorized officer is a current serving member of the Inland Revenue Special Compliance Office. A copy of the Hansard Statement will normally be given at the first meeting with the taxpayer after the case has been taken up for investigation under Code of Practice 9. The Hansard procedure is explained in the Inland Revenue Code of Practice 9.

This has been substantially updated as a result of the revised Statement. (There have also been some consequential changes to Code of Practice 8, which deals with cases where serious fraud is not suspected). One of the key changes is to make clear that it is for the taxpayer to decide whether to co-operate with the investigation and that in making this decision the taxpayer may seek the help of a professional advisor. The Code of Practice also makes clear that any information that the taxpayer does provide may be used in any subsequent proceedings to determine tax, interest and penalties. As stated above, if the case is concluded by way of a money settlement, the level of cooperation will be one of the factors taken into account in deciding the amount of any penalties.



These changes will have immediate effect and so taxpayers subjected to the Hansard procedure will be read the revised text from now on. Copies of the revised Codes of Practice will be available soon from the Inland Revenue.

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## **UK IRS's Code of Practice 9 (2005) –**

### **Applies to Sole Traders, Partnership, Director, Landlord & Investors**

#### **► What is a Code of Practice 9 (2005)?**

HM Revenue & Customs was created in April 2005, integrating the former Inland Revenue and HM Customs & Excise.

This Code of Practice applies only to investigations that started after 1 September 2005. It covers cases where there is suspected serious fraud and the opportunity to disclose fully all irregularities in your last 20 years tax affairs.

The investigation will be undertaken with or without your voluntary co-operation. If you do co-operate, the investigation will proceed, quickly, more efficiently and advantageously for both parties than if you refuse to co-operate.

The Code of Practice covers direct taxes including income taxes, corporation tax, capital gains tax, National Insurance contributions and indirect taxes including Value Added Tax and Excise and Customs duties.

This Code of Practice promises you a fair treatment under the law and the start of an investigation process into your last 20 years tax affairs.

Where the HMRC decide to investigate using the Civil Investigation of Fraud procedure - COP 9 (2005)/sample letter, they will not seek prosecution for the tax fraud which is the subject of that investigation. The taxpayer will be given an opportunity to make a full and complete disclosure of all irregularities in their tax affairs in the last 20 years.

## **QUESTIONS**

#### **► Why were my submitted self assessments (SA), vat returns, PAYE returns and corporation tax self assessments (CTSA) all wrong?**

When you have received a Code of Practice 9 (2005) letter inviting you to attend a meeting, HMRC have written to you because they have grounds to suspect that there are irregularities in your tax affairs which they would like to discuss with you.

HMRC will not reveal to you the information they have obtained to raise their concerns. This is because the aim of an investigation under this Code of Practice 9 (2005) is to give you the opportunity to make a full and complete disclosure of all irregularities in all aspects of taxation.

#### **► Who can help me now?**

HMRC encourage you to appoint a professional advisor to represent you during their investigation - This is completely your decision.

Should you appoint professional representation, HMRC expects high standards from your chosen professional adviser.

The investigation process involves sending you an opening letter sample letter.

► **I was and still the director and shareholder of the company, will I be under enquiry at the same time?**

Yes!

► **I was in a partnership and later in a company some years back but now I am self employed, what does this mean to me?**

When someone is in receipt of this Code of Practice 9 (2005) it is a life time tax affairs that are being investigated and the law allows HMRC to go back to the last 20 years.

► **Will I have to attend the meetings?**

No, it is a matter for you to decide whether or not to attend meetings with HMRC as stated in the Code of Practice 9 (2005).

If you decide to attend the meeting you will be asked formal questions and you can only respond yes or no. There are five direct tax questions and four indirect tax questions.

► **How long will HMRC allow the full disclosure to be made?**

If you tell HMRC that there are matters that need to be disclosed, HMRC will invite you to provide a Disclosure Report.

The areas to be covered in the report will be:

- A brief business history;
- The nature of the irregularities and how they came about;
- The extent of the irregularities;
- Steps taken to verify amounts with supporting documentation and any assumptions made;
- A detailed schedule of the irregularities for each period involved for each tax.

HMRC will agree a timetable for producing this report at the meeting. In most cases they will expect the disclosure report to be submitted within six months of the opening meeting.

HMRC expect you to demonstrate a willingness to agree realistic proposals to make early payment of arrears. For that reason they will invite you to make payments on account towards any tax arrears, both at the initial meeting, and throughout the investigation.

► **How long is the investigation?**

HMRC will close the investigation as soon as they are satisfied that your tax affairs are in order as stated in the Code of Practice 9 (2005).

► **How far back can they go?**

The last 20 years , in other words it is your business life time.

► **What are the HMRC's areas of concern that there had been irregularities in the past?**

HMRC's areas of concern are the areas we specialise in

► **Do the directors, company secretaries, shareholders have to attend meetings?**

The directors and employees of the company are not obliged to come to any meeting, state in the Code of Practice 9 (2005).

► **How much extra tax (SA, CTSA, VAT and PAYE) to pay?**

HMRC opens this Code of Practice 9 (2005) and expects to receive up to £500,000 all inclusive.

► **How are penalties worked out?**

The penalty figure will be a percentage of the tax underpaid. In law it could be 100% of that amount.

HMRC start with a figure of 100% and reduce it by an amount which depends on three factors:

- Disclosure - A reduction of up to 20%.

If you make a full disclosure at the time HMRC first open the enquiry, you will get a considerable reduction in the amount of the penalty.

If you deny until the last possible moment that anything is wrong, you will get little or no reduction for disclosure.

Between these two extremes a wide variety of circumstances is possible. HMRC will consider how much information you gave, how quickly, and how that contributed towards settling the enquiry.

- Co-operation - A reduction of up to 40%.

If you supply information quickly, attend interviews, answer questions honestly and accurately, give all the relevant facts and pay tax on account when it becomes possible to estimate the amount due, you will then get the maximum reduction for co-operation.

If you put off supplying information, give misleading answers to questions, do nothing until we take formal action against you and generally obstruct the progress of the enquiry you will not get any reduction at all.

Between these extremes there is a wide range of possible circumstances and we will look at how well you have co-operated with the enquiry.

- Seriousness - A reduction of up to 40%.

Your actions may amount to a premeditated and well-organised fraud or something much less serious. We will take into account what you did, how you did it, how long it went on and the amounts of money involved. The less serious the offence, the bigger the reduction in the penalty.

► **Will I have to pay VAT?**

Yes and it is included in the disclosure reports.

► **Will I have to pay PAYE separately?**

No and it is included in the disclosure reports



## 7.2 US IRS's Compromise Procedure for Settlement- Overview

### 8.23.1 Offer in Compromise Overview

- 8.23.1.1 [General](#)
- 8.23.1.2 [Suspension of Levy While Offer is Pending](#)
- 8.23.1.3 [Conference and Settlement Practices](#)
- 8.23.1.4 [Requirements for Compromise](#)

#### 8.23.1.1 General

(08-28-2009)

1. This IRM provides instructions for Appeals personnel for offer in compromise cases. The procedures in IRM 8.23 are intended to be consistent with the procedures in IRM 5.8, *Offer in Compromise*, IRM 5.15, *Financial Analysis*, as well as with other sections of IRM Part 8 - *Appeals*. Section 509 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) significantly impacted the offer in compromise program. Appeals' responsibilities under TIPRA differ between Collection Due Process (CDP) and non-CDP offers. Guidance on CDP offers is available in IRM 8.22.2.
2. IRM 5.8 contains the primary policies and procedures for both Collection and Appeals for processing, evaluating and making determinations on offers. In addition to IRMs 5.8 and 8.23, other IRMs impacting Appeals' consideration of an offer in compromise (OIC) include:
  - IRM 8.1.1, *Appeals Operating Directives and Guidelines*
  - IRM 8.2, *Pre-90-Day and 90-Day Cases* (contains general information for all Appeals cases)
  - IRM 8.6.1, *Conference and Issue Resolution*
  - IRM 8.6.4, *Reaching Settlement and Securing an Appeals Agreement Form*
  - IRM 8.21, *Appeals Statute Responsibility*
3. An offer in compromise (OIC) is an agreement between a taxpayer and the government that settles a tax liability in exchange for payment of less than the full amount owed. IRM 5.8.1 contains a general overview of the OIC program, including:
  - Authority
  - Policy
  - Objectives
  - Bases for Compromise
  - Payment terms
  - Fees and required initial payments
4. Per IRC 7122(f) and Notice 2006-68, an OIC shall be deemed accepted if it is not rejected, returned or withdrawn before the date which is 24 months after the date of the submission of the offer. Any period during which any tax liability which is the subject of the OIC is in dispute in any judicial proceeding shall not be taken into account in determining the expiration of the 24-month period. Per Notice 2006-68, the date of submission of an offer for purposes of section 7122(f) is the date on which the offer is received by the Service.
5. In general, Appeals has jurisdiction to make decisions on OIC cases in the following circumstances:
  - A. Offers appealed after being rejected by Collection or Examination.
  - B. Offers based on doubt as to liability (DATL) if the liability was previously determined by Appeals.
  - C. Offers submitted as an alternative to the proposed collection in a CDP or equivalent hearing (EH) case before the CDP Notice of Determination or EH Decision Letter is issued.

- D. Offers being evaluated by Collection when a Notice of Federal Tax Lien (NFTL) is filed and the taxpayer requests a CDP or equivalent hearing.

**Note:**

Appeals will not accept jurisdiction over an OIC if we do not have the authority to determine the type of tax that is being compromised, e.g. Alcohol, Tobacco and Firearm (ATF) taxes.

**Note:**

Appeals has no authority to compromise a liability if the Department of Justice (DOJ) can settle the case. This is identified by a Transaction Code (TC) 550 with definer code "04." Also, a TC 520 with a Closing Code (cc) 80 indicates a judgment was obtained and a TC 520 cc 70 indicates litigation is pending. See IRM 5.8.1, *Offer in Compromise Overview*.

**Note:**

The Service will not consider an offer that is solely for a tax period or tax year that has not been assessed unless the Integrated Data Retrieval System (IDRS) indicates a return was received or an assessment is pending. See IRM 5.8.1.7.2 .

Per Q-A 6 in Section 3 of Rev. Proc. 2000-43 , OIC cases are subject to ex parte provisions. The third party contact waiver provision found in paragraph (n) in Section V of Form 656 pertains to non-IRS contacts only and is not a waiver of prohibited ex parte communications between Appeals and either the Collection or Examination functions.

While following the general OIC procedures found in IRM 5.8, Appeals exercises independent judgment concerning the disputed valuations and business decisions made by Collection. Appeals also makes independent determinations regarding offers based upon DATL, which are generally evaluated in the same manner as in a proposed deficiency case.

**8.23.1.2**

**(08-28-2009)**

**Suspension of Levy While Offer is Pending**

1. IRC 6331(k) provides that no levy may be made
  - during the period that the offer is pending,
  - for an additional 30 days after the offer is rejected, and
  - during the time any appeal is pending.
2. Treasury Regulation 301.7122-1(d)(2) states that an offer becomes pending once it is accepted for processing. This is the date the Service official signs the Form 656, *Offer in Compromise* and inputs Transaction Code (TC) 480.

**Note:**

The date an offer becomes pending (TC 480 date) is not the same as the offer submission date under TIPRA.

3. IRC 7122(e) states there must be an independent administrative review of any rejection of an OIC before such rejection is communicated to the taxpayer and Treasury Regulation 301.7122-1(f)(1) provides that an offer in compromise has not been rejected until IRS issues a written notice to the taxpayer or his representative advising of:
  - The rejection
  - The reason(s) for rejection

- The right to an appeal
4. Treasury Regulation 301.7122-1(f)(5) further provides that a taxpayer may administratively appeal the rejection of an offer to the IRS Office of Appeals if, within the 30-day period commencing the day after the date on the letter of rejection, the taxpayer requests such an administrative review in the manner provided by the Secretary.
  5. IRC 6331(i)(5) provides that the period of limitations to collect the tax under IRC 6502 shall be suspended for the period during which levy is prohibited. See also Treasury Regulation 301.7122-1(i)(1).

**Note:**

The suspension of the period of limitations to collect (CSED) was repealed by the Community Renewal Tax Relief Act effective December 21, 2000. The Job Creation and Workers Assistance Act re-established the suspension of the CSED effective March 9, 2002. Appeals and Settlement Officers considering cases involving older liabilities with multiple prior OICs must be aware of the proper CSED. IRM 5.8.10 and IRM 8.21 contain detailed information on CSED issues involving OICs.

**8.23.1.3****(08-28-2009)****Conference and Settlement Practices**

1. As previously indicated, IRM 5.8 contains the primary policies and procedures for processing, evaluating and making determinations on offers. Appeals does not have the authority to disregard established policies or procedures. However, the Appeals process in an OIC case is not merely an extension of the Small Business Self Employed (SBSE) Collection process. The role and mission of Appeals is different from that of SBSE Collection. Appeals personnel must employ Appeals' standard conference and settlement practices for all work streams, including OICs.
2. The primary obligations Appeals has in a non-CDP OIC appeal are to:
  - Provide the taxpayer with an opportunity for the Appeals conference he/she asked for under IRC 7122(e)(2)
  - Determine whether SBSE was correct in rejecting the taxpayer's offer by addressing the disputed issues that caused the offer to be rejected
  - Advise the taxpayer of what's needed in order for the offer to be properly evaluated and/or accepted and provide a reasonable opportunity to submit supplemental information or documentation that the Appeals Officer or Settlement Officer believes is necessary to properly evaluate the offer and/or may make the offer acceptable
  - If an offer cannot be accepted, communicate the reason(s) why and, when appropriate, possible alternative resolution options (see IRM 8.23.3.13, *Alternative Resolutions for Offers*, for applicability)

**Note:**

It is important to note that general Appeals policy and procedures call for the Appeals Officer or Settlement Officer to offer the non-CDP OIC taxpayer an opportunity for the Appeals conference he/she asked for when the offer was rejected. IRM 8.6.1 discusses conference and settlement practices applicable to all Appeals cases and makes no exceptions to offering the taxpayer an opportunity for a conference. This applies even in cases in which the taxpayer is not in compliance with filing and/or payment requirements. Do not close out a non-CDP offer case as sustaining rejection of the offer without first offering the taxpayer an opportunity for a conference. See IRM 8.23.2.4 for additional details on conferences involving taxpayers who do not remain in compliance after the offer is rejected.

3. In a non-CDP OIC case, Appeals is not responsible to "re-work" the offer. Requests for the taxpayer to provide supplemental information to Appeals should clearly spell out
  - precisely what is needed
  - that the information, documentation, unfiled return, payment, etc., is necessary to enable Appeals to properly evaluate the offer
  - precisely when the requested items must be received in Appeals
  - that Appeals must make its decision on the offer based upon available information (unless the conference has not yet been held) if all of the requested items are not received by the stated deadline

See IRM 8.23.3.3.1.2 , *Requesting Supplemental Information*.

4. A taxpayer appealing SBSE's rejection of his/her offer has already had an opportunity to present to SBSE the issues and financial information or documentation relevant to the acceptance of the offer, so deadline extensions by Appeals should not be routine and generally granted only if the Settlement Officer believes an extension may ultimately lead to an opportunity for settlement and is appropriate given the individual facts and circumstances of the case. Appeals should not generally be looked upon to be the initial finders of fact or the first to consider determinative information. The reason for granting the taxpayer an extension of time to provide requested information/documentation or clear up a compliance issue should be documented in the case activity record.

**Note:**

Having found a basis to reject the offer, Collection may cease its evaluation and simply reject the offer without fully identifying or developing all RCP issues. As such, the taxpayer may not have had a full opportunity to present information and/or documentation to SBSE to address relevant RCP issues before the offer was rejected. If Appeals agrees with arguments made by the taxpayer, Appeals may need to address the issues not addressed by Collection before accepting the offer. See also IRM 8.23.3.3.

5. IRM 8.1.1, *Appeals Operating Directives and Guidelines*, IRM 8.6.1, *Conference and Issue Resolution*, and IRM 8.6.4, *Reaching Settlement and Securing an Appeals Agreement Form*, contain general guidance on Appeals conference and settlement practices and other general Appeals responsibilities. Because a taxpayer may not (generally) seek judicial review of Appeals' decision to sustain Collection's rejection of an offer, not all of IRMs 8.1.1, 8.6.1 and 8.6.4 relate to OICs, but some relevant portions of those sections are:
  - A. *Appeals is committed to the reduction of the outstanding accounts receivable of the Service. Appeals Officers or Settlement Officers can assist in this reduction by soliciting advance payments, using offer in compromise and installment agreement procedures, and quickly resolving problems with incorrect assessments. (See IRM 8.1.1.6.)*
  - B. *Conduct conferences in an open atmosphere that fosters cooperation in the resolution of disputes. Above all, it is of utmost importance to be a good listener. (See IRM 8.6.1.3.)*
  - C. *The judicial attitude is one which reasonably appraises the facts, law, and litigating prospects; uses sound judgment and ability to see both sides of a question; and is objective and impartial. Any approach which contemplates a maximum possible result in favor of the Government or a deficiency in every case is incompatible with a judicial attitude and the Appeals mission. (See IRM 8.6.4.1.4.)*
  - D. *Do not take advantage of a taxpayer's lack of technical knowledge. The Appeals Officer or Settlement Officer will assist the pro se taxpayer in every way possible. In the absence of an agreement, explain the taxpayer's further appeal rights. (See IRM 8.6.4.1.4 .)*



**8.23.1.4****(08-28-2009)****Requirements for Compromise**

1. This section contains only the most basic compromise requirement details plus some information that's unique to Appeals. Appeals personnel considering offers must be familiar with the revised guidelines in IRM 5.8 , which contain numerous post-TIPRA changes. To avoid duplication of procedures, the bulk of what you need to know in terms of OIC processability, perfecting and payment requirements is found in IRM 5.8.2 , *Offer in Compromise*, *Offer Receipts*, and IRM 5.8.3, *Offer in Compromise, Processability* .
2. Except as indicated below, an offer must be filed on the current revision of Form 656 to be accepted. The Form 656 instruction booklet provides specific details for completing the offer.

**Note:**

Collection will process an offer even if the Form 656 does not list all outstanding tax debts. However, an amended Form 656 listing all known tax debts must be secured prior to accepting the offer.

3. If you are considering an OIC case where the original offer was mailed before July 16, 2006, the offer may be accepted using the July 2004 revision of Form 656. This is a pre-TIPRA offer. If an amendment is needed on a pre-TIPRA offer, you may use the July 2004 revision of Form 656 as the taxpayer is not required to make a TIPRA payment with the amended offer.
4. A Form 656-L, *Offer in Compromise (Doubt as to Liability)*, is used for an offer based upon doubt as to liability. There is no DATL option on the February 2007 or subsequent revisions of Form 656 because Notice 2006-68 provides that taxpayers submitting offers based only on DATL are not required to make TIPRA payments with the offers.
5. Each separate tax period and type of tax must be listed on the Form 656. If an offer involving a Trust Fund Recovery Penalty (TFRP) assessment is accepted, the case file must include information identifying the Business Master File (BMF) periods comprising the TFRP assessment(s). A TFRP assessed prior to August of 2000 reflects only the last quarterly period that was the subject of the TFRP. In August of 2000, IRS began assessing TFRPs for each respective quarter. Verification on IDRS is required to determine how the assessment was completed. See also IRM 8.23.3.4 concerning amended offers and the periods to be listed on the amended Form 656.
6. IRC 7122(b) requires an opinion from the Office of Chief Counsel on all offers recommended for acceptance in which the unpaid liability (including tax, penalties and interest) is \$50,000 or more. Counsel's review of a proposed acceptance has two separate and distinct components:
  - A. Certification that the legal requirements for compromise were met.
  - B. Review of the proposed compromise for consistent application of the Service's acceptance policies.

**Note:**

Further details concerning Counsel's review and statutorily required opinion are in IRM 8.23.4.2.2, *Counsel Review of Acceptance Recommendations*.

**8.23.1.4.1****(08-28-2009)****Application Fees, Offer Terms, Payments and Deposits**

1. On May 17, 2006, TIPRA was signed into law by the president. Offers received on or after July 16, 2006, must include the applicable user fee and an additional partial payment under TIPRA. The offer terms and associated initial partial payment requirements are:

- A. **Lump Sum Cash Offer:** Payable in five or fewer installments from notice of acceptance. The Form 656 must be accompanied by either payment of 20% of the amount of the proposed offer or a signed Form 656-A, *Income Certification for Offer in Compromise Application Fee and Payment*.
- B. **Short Term Periodic Payment Offer:** Payable in six or more installments within two years (24 months) from the IRS received date. The Form 656 must be accompanied by either the first proposed installment or a signed Form 656-A. Additional installments must be paid in accordance with the taxpayer's proposed terms while the offer is being considered unless the offer is based upon DATL or the taxpayer meets the low-income exemption via an approved Form 656-A. See paragraph (4) below for information on the low-income exemption.

**Note:**

If an amended Short Term Periodic Payment Offer is secured, the 24-month period during which the taxpayer must pay the Short Term Periodic Payment Offer begins the date the amended offer is accepted. The taxpayer is still required to make the proposed periodic payments while the amended offer is being considered, but the 24-month period to make such payments doesn't begin until the date the offer is accepted. See IRM 5.8.1.10.4 .

**Note:**

The 24-month time period during which the taxpayer must pay the Short Term Periodic Payment Offer also begins the date such offer is accepted if the Short Term Periodic Payment Offer is based upon DATL, the taxpayer qualifies for the Form 656-A waiver, or if Appeals accepts the original Short-Term Periodic Payment Offer that was rejected by SBSE without amendments.,

**Example:**

On May 15, 2009, Appeals received a Short Term Periodic Payment OIC based upon doubt as to collectibility as alternative to collection in a CDP case. The taxpayer made the required monthly periodic payments and on January 18, 2010 submitted an amended Short Term Periodic Payment Offer. The amended offer was accepted February 15, 2010. The amended offer is payable in six or more installments before February 15, 2012.

- C. **Deferred Periodic Payment Offer:** Payable in six or more installments over 25 or more months from the IRS received date, but within the time remaining on the statutory period for collection. The Form 656 must be accompanied by either the first proposed installment or a signed Form 656-A. Additional installments must be paid in accordance with the taxpayer's proposed terms while the offer is being considered unless the offer is based upon DATL or the taxpayer meets the low-income exemption via an approved Form 656-A. See paragraph (4) below for information on the low-income exemption.

**Note:**

If the offer is accepted **and** is either based upon DATL or the taxpayer qualified for the Form 656-A waiver, the taxpayer must begin making periodic payments in accordance with the terms of the accepted offer after Appeals issues the written notice of acceptance.

**2. Note:**

3. Section 7122 does not require the taxpayer to make periodic payments on either a regular basis or in equal amounts, although the revised Form 656 is set up for the taxpayer to make such a proposal. The amounts and due dates of payments must be specified.
4. The TIPRA requirement for a taxpayer to make proposed periodic installment payments while a Periodic Payment offer is being considered ends when Collection rejects the offer. Taxpayers are not required to continue making periodic installment payments while a rejected offer is being considered by Appeals **unless** Appeals secures an amended offer. See IRM 8.23.3.4 for additional guidance on amended offers secured by Appeals.
5. IRC 7122 provides that the Secretary may issue regulations waiving any partial payments required with the submission of the offer. The only available waivers per Notice 2006-68 are for offers based upon doubt as to liability and offers received from low-income taxpayers. Such taxpayers are not required to pay the \$150 processing fee, initial payment, or periodic installment payments.
6. The IRS OIC Monthly Low Income Guidelines found in the Form 656 information booklet were increased to 250% of the most current Health & Human Services poverty guideline, so an increased number of taxpayers will be exempt from the user fee and TIPRA payment requirements. A taxpayer seeking a low-income exemption must submit a Form 656-A with the offer. The low-income exemption applies only to individuals.
7. The IRS now requires that installment agreements in effect prior to receipt of an OIC remain in effect while an offer is being considered only with regard to Lump Sum Cash offers. Installment agreement payments are not required for Periodic Payment offers because the taxpayer is required to make proposed installment payments pursuant to Section 7122 while the offer is under consideration. See IRM 5.8.3.18. Even though the taxpayer is no longer required to make periodic installment offer payments after a Periodic Payment offer is rejected by SBSE, the taxpayer is still not required to make prior installment agreement payments while the matter is being considered by Appeals.
8. IRM 5.8.3.7 contains detailed information concerning OIC payment terms, processability issues and initial payment requirements for offers. See also IRM 8.23.3.1.1.1.

**8.23.1.4.1.1****(10-16-2007)****Processing OIC Payments**

1. Appeals may process all "pre-acceptance" TIPRA payments using a Form 3244, *Payment Posting Voucher*, except for the payment that's due with the original Form 656. The user fee and initial payment are part of the overall processability determination so they must be forwarded to the appropriate Centralized Offer in Compromise (COIC) site. Subsequent periodic installment payments made prior to acceptance of the offer may be processed by Appeals as follows:
  - A. Apply designated payments for tax debts other than employment or excise taxes per the written designation using Designated Payment Code (DPC) 35.
  - B. Apply undesignated payments for tax debts other than employment or excise taxes to the liability with the earliest CSED using DPC 35.
  - C. Apply designated payments received with an amended Form 656 for tax debts other than employment or excise taxes per the written designation using DPC 34.
  - D. Apply undesignated payments received with an amended Form 656 for tax debts other than employment or excise taxes to the liability with the earliest CSED using DPC 34.
  - E. Apply payments designated to trust fund taxes for employment or excise tax (trust fund) debts per the written designation using DPC 02.
  - F. Apply undesignated payments for employment or excise tax debts to all unpaid Forms 1120 and 940 liabilities and then to other non-trust fund liabilities beginning with the liability with the earliest CSED using DPC 35.

**Note:**

This is different than the standard TFRP payment application procedures outlined in IRM 5.7.4.3, *Trust Fund Compliance - Investigation and Recommendation of the Trust Fund Recovery Penalty, Calculating the TFRP*, because offer payments are applied in the best interest of the government, unless otherwise designated.

- G. Apply payments designated to trust fund taxes that are received with an amended Form 656 per the written designation using DPC 02.
- H. Apply undesignated payments for employment or excise tax debts that are received with an amended Form 656 to all unpaid non-trust fund liabilities beginning with the liability with the earliest CSED using DPC 34.
- 2. Per IRC 7122(c)(2)(A) and Notice 2006-68, taxpayers are entitled to designate all payments required under TIPRA while the offer is under consideration. The designation must be made in writing at the time the payment is made. Absent a written designation, the payments will be applied in the best interest of the government. Once the taxpayer designates application of a payment, it cannot be changed at a later date.

**Note:**

The OIC user fee cannot be designated and will be applied to the taxpayer's liability in the best interest of the government.

- 3. Once the offer is accepted, the taxpayer no longer has the right to designate subsequent offer payments. All post-acceptance payments must be processed by the Monitoring Offer in Compromise (MOIC) unit.

**Collecting Process**

**Chapter 20. Abusive Tax Avoidance Transactions**

**Section 5. Offer In Compromise Procedures**

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**5.20.5 Offer In Compromise Procedures**

- 5.20.5.1 [Offer in Compromise Procedures](#)

**5.20.5.1**

**(09-21-2005)**

**Offer in Compromise Procedures**

- 1. An Offer in Compromise (OIC) based on doubt as to collectibility will be accepted when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. Refer to IRM 5.8, *Offer in Compromise*, for detailed procedures on Offers in Compromise.

**5.20.5.1.1**

**(09-21-2005)**

**Receipt of Offer in Compromise**

1. An OIC may be submitted by the taxpayer or their representative directly to the Revenue Officer or sent to the Centralized Offer in Compromise (COIC) site. If an OIC is received by a revenue officer, the offer is forwarded to the COIC site handling the geographic area where the taxpayer resides.
2. The taxpayer or their representative may submit the offer directly to the COIC site, with or without the knowledge of the revenue officer. If the offer is processable the process examiner will input the TC 480, *Offer-In-Compromise Pending*, and the modules will update to Status Code 71, *OIC Pending/Suspend TDA*. The revenue officer would then receive an ICS notification to close the case.

## 5.20.5.1.2

(09-21-2005)

**ATAT Revenue Officer Case Actions**

1. A Form 657, *Offer in Compromise/Revenue Officer Report*, should be submitted when it is discovered that an offer has been filed on an ATAT case. The Form 657 allows the RO to communicate whether:
  - The offer should be returned
  - A jeopardy situation exists
  - Investigation of the offer should go forward
2. If it is determined that the offer was submitted solely for the purpose of delaying collection, the Form 657 should be completed to recommend return of the offer. After group manager concurrence, the COIC site will promptly return the offer per IRM 5.8.3.19, *Solely to Delay Collection Determinations*.
3. Collection activity may continue if collection of the tax is in jeopardy, per IRM 5.8.3.18, *Withholding Collection*, paragraph (2). The definition of the term "jeopardy" in IRM 5.8, *Offer In Compromise*, is consistent with jeopardy levy as defined in IRM 5.11.3 and Policy Statement P-4-88. If a jeopardy determination is made, collection efforts can continue against the assets of the taxpayer and the offer will be immediately closed as a return per IRM 5.8.3.18 paragraph (4). The taxpayer does not receive appeal rights in these situations.
4. If the offer was submitted in good faith and jeopardy does not exist, collection must be suspended during the time the offer is under consideration. Form 657 should be submitted detailing the actions taken to date as well as any additional information that may not have been disclosed by the taxpayer in the offer submission.
5. The correct ICS sub code must be maintained on the case when an OIC is submitted. If Form 657 is completed recommending return of an OIC, then the ATAT sub code should remain on the case. If an offer is submitted and collection will be suspended and the offer will be worked by the OIC Specialist, then the ICS sub code should be updated to 106, OIC.