DELHI TAX COMPLIANCE ACHIEVEMENT SCHEME, 2013

HIGHLIGHTS

Abbreviations used:

(i) **DSC** (or) **Scheme** : Delhi Tax Compliance Achievement Scheme/Voluntary VAT Amnesty Scheme(VVAS)

(ii) **DVAT Act** : Delhi Value Added Tax Act, 2004

(iii) **CST Act** : Central Sales Tax Act, 1956

(iv) **DST Act**: Delhi Sales Tax Act, 1975

(v) **WCT Act** : Delhi Sales Tax on Works Contract Act, 1999

(vi) **RTU Act**: Delhi Sales Tax on Right to Use Goods Act, 2002

(vii) **ET Act** : Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994

(viii) **VATO** : Value Added Tax Officer and Sales Tax Officer

Notes - In this Paper -:

1. In this Paper, "Notice of Assessment/Penalty" under the DVAT Act has been considered and titled as "Assessment Order"; and Objection as "Appeal".
2. In this paper, the term "declared tax" means amount disclosed/surrendered and amount settled (where assessment order has been issued) under this Scheme. The term "declarant" means the person, who has declared tax.

OBJECTIVE AND SCOPE OF THE SCHEME

A. Improve Self-Compliances:

Where **assessment order has NOT been issued**, the declarant (including trader, manufacturer, contractor, builder, leasing company, etc.) shall pay only declared tax **(for the period up to 31.03.2013)**; and get **immunity from interest, penalty and prosecution**. **Circumstances, such as,-**

(i) Dealer failed to obtain registration and pay tax;

(ii) Rate of tax has been wrongly charged by the selling dealer;

(iii) Sale has not been disclosed/under-disclosed in the DVAT / CST Act

(iv) Input tax credit (ITC) has wrongly been claimed by the purchasing dealer;

(v) Credit Note/Debit Note, including bulk discounts, have not been accounted for.

(vi) Central sale has been stated as local sale or *vice a versa,* resulting in tax deficiency*;*

(vii) In case of central sales against Form C or other declaration forms, the declarant is not expecting central declaration forms from purchasing dealers;

(viii) Matter is pending in assessment, audit or special audit and the assessment order has not been framed by VATO;

(ix) Goods, paper and other accounts are seized by enforcement team, in inspection, survey, search or seizure, for period upto 31.03.2013, where the declarant expects some tax deficiency;

(x) TDS has not been deducted u/s 36A of the DVAT Act;

B. Disputes Settlement

- Where the assessment order has been issued by the Department, the declarant shall pay tax and interest as stated in such order/notice.
- The order must pertain to a period before and up to 31.3.2013, and tax has not been paid up to 31.8.2013.
- The assessment order might be issued under the DVAT Act, CST Act, DST Act, WC Act, RTU Act, or ET Act.
- The dispute may or may not be pending before any higher forum including the DVAT Tribunal or the High Court or the Supreme Court.
- In case, an assessment order appealed against, has been decided partly in favour of the appellant, the declarant is eligible for availing the scheme for the balance disputed demand.
- The declarant is eligible even if no appeal has been filed against that order so far.
- The declarant will get **immunity from payment of interest from the date of order till the date of declaration**, penalty and prosecution under the Act.

IMPORTANT DATES & PERIODS

12.09.2013	Enactment of section 107 of the DVAT Act empowering the Government to introduce this Scheme
20.09.2013	Date of Notification of the Scheme and its coming it into force
Up to 31.03.2013	Eligibility: Period for which tax dues might be declared or paid
31.08.2013	Eligibility: Tax dues up to 31.3.2103 has not been paid or only partly paid by 31.08.2013
31.01.2014	Last date of payment of at least 50% of declared tax and filing of declaration in Form DSC-1 under this Scheme
21.03.2014	Last date of payment of remaining amount of declared tax, if any

COMPUTATION OF TAX DUES

S.N.	Nature of Tax Dues	Procedure of Calculation
1	**Other than Works Contractors:** Dealers, whether registered or not, under the DVAT Act or the CST Act on whom assessment order has **not** been served by VATO	Commodity wise taxable turnover in the tax period in respect of which declaration to be made (X) Rate of tax applicable for that tax period

S.N.	Nature of Tax Dues	Procedure of Calculation
2	**Works Contractors:** Dealers, whether registered or not, under the DVAT Act or the CST Act on whom assessment order has **not** been served by VATO	(a) Works contractors engaged in construction, of complex, building, etc., for sale to a buyer before construction is complete, **where value of land is included** in total consideration: **@1%** of total consideration (including labour & services); (b) **Other works contractors,** including the dealers stated at Sl. No. (a), **who opt to exclude the value of land** as per Rule 3 of the DVAT Rules; **@ 3%** of total turnover (including value of labour and services)**.**
3	Dealers registered under the DVAT Act or the CST Act on whom assessment order has been served on certain issues, but declaring tax dues on different issues	As stated at Sl. No. 1 or 2, as the case may be
4	Dealers, including work contractors and builders, registered under the DVAT Act, CST Act DST Act, WC Act, RTU Act or ET Act on whom assessment order has been served	Aggregate of amount of tax and interest stated in the assessment order (exclude penalty, if any) **(less)** Amount already paid by the dealer towards the said demand.
5	Persons required to deduct tax at source u/s 36A of the DVAT Act (TDS)	3% of total sum paid or credited by the person for discharge of any liability for the execution of works contract or the amount actually deducted, whichever is greater **(less)** Amount already deposited towards such discharge

- **Manner of calculation of tax dues by the works contractor, being the builders:**

Transactions of builders may be divided in two parts: -

(i) Activity carried by the builder for the land owner, that is, determination of value of works contract for the land-owner where consideration has been received by the builder in the form of land : Here the value of land shall be determined as per newly inserted Rule 3(1A) of the DVAT Rules;

(ii) Activity carried on by the builder for the intended buyer (booking of property/unit before completion of construction by the builder): Builder has two options, namely -

(a) Pay tax @1% of total consideration, including the value of land, receivable/ received from the intended buyer; or

(b) Pay tax @ 3% of total turnover (including value of labour and services) as reduced by the value of land determined in accordance with the recently amended Rule 3(3) & (4) of the DVAT Rules.

The Government has amended Rule 3 of the DVAT Rules vide Notification No. F.3(16)Fin(Rev-I)/2013-14/ds VI/785 effective from 20.09.2013. This Rule facilitates the works contractor to determine his taxable turnover.

A builder can opt to pay 1% for a project wherein land cost is included in turnover and 3% in another project wherein land cost is not included.

- **Adjustment of input tax credit from declared tax dues**

  The input tax credit cannot be adjusted against payment of tax dues under VVAS. Accordingly, entire tax dues under the Scheme shall be paid in cash through the normal e-payment method.

- **Adjustment of 'excess tax credit' or 'carry forward amount' from declared tax dues**

  There are no provisions for such adjustment and, thus, entire amount shall be paid by the declarant in cash. He shall not be entitled to adjust his carry forward amount as per the Returns, if any. For example, a declarant, who has carry forward amount of Rs. 10 lacs as on the date of declaration, declares the amount of tax dues of Rs.12 lacs under this Scheme. In such a case, he shall pay entire Rs.12 lacs in cash, without adjusting the carry forward amount of Rs.10 lacs.

PROCEDURE OF MAKING DECLARATION

1. Compute the amount of tax dues in accordance with preceding Paras;
2. If not registered under the DVAT Act (either as a dealer with TIN allotment or as a TDS deductor with TAN allotment), obtain registration. Also pay tax and file returns for the period after 1.4.2013 along with the declaration in DSC-1;
3. Where declaration is made in relation to the tax dues against which objection/appeal/ revision is pending before the higher forum, then-
   i. all statutory appeals/revisions pending before quasi-judicial forums up to the stage of Tribunal shall be deemed to have been withdrawn once the Scheme is opted for;
   ii. all matters pending in the High Court and Supreme Court shall be withdrawn by the declarant, and the declarant shall submit the copy of the application filed before the Court for withdrawal along with Form DSC-1;
4. Fill the declaration in Form DSC-1 on the web-site of the Department;
5. Pay **at least** 50% of amount of declared tax dues through Challan online. **It may be noted that declarant may pay even the entire amount of tax dues at this stage;**
6. File hard copy of Form DSC-1 along with Challan to the designated authority on or before 31.1.2014;
7. The designated authority shall *suo-moto* issue the acknowledgement in Form DSC-2 within a period of 15 working days from the date of receipt of the declaration. If it is not received, then designated authority may be contacted;
8. Pay remaining (unpaid) amount of tax dues through Challan online on or before the 21.3.2014;
9. Submit proof of such payment along with a copy of acknowledgement in DSC-2 (already received at Step No. 7) to the designated authority;
10. Obtain Form DSC-3 from the designated authority: On furnishing the details of full payment of declared tax dues, the designated authority shall issue an acknowledgement of discharge of such dues within 15 days in Form DSC-3;

11. A declaration made under this Scheme shall become conclusive upon issuance of Form DSC-3 by the designated authority.
12. The discharge in DSC – 3 will be valid only for the period for which declaration is filed.
13. Amount paid under this Scheme will not be refunded under any circumstances;
14. If fails to pay the tax dues, either fully or in part, after making declaration, such balance dues along with interest thereon shall be recovered under the provisions of DVAT Act.

IMMUNITIES UNDER THE SCHEME

A. Immunities, where assessment order has NOT been issued:

- Immunity from interest in relation to declared tax
- Immunity from penalty in relation to declared tax
- Immunity from prosecution
- Immunity from any other proceedings in relation to declared tax
- If not already registered under the Act:-
  - Immunity from penalty of late registration
  - Immunity from interest for late payment of tax for the period after 1.4.2013
  - Immunity for late filing of returns for the period after 1.4.2013
- A declaration made under this Scheme shall become conclusive upon issuance of Form DSC-3, and no matter shall be reopened/reassessed/reviewed thereafter in any proceedings under this Scheme or the Act before any Authority or Court relating to the period covered by such declaration to the extent of tax dues declared by the declarant;
- **The information gathered vide a declaration under the Scheme shall be kept confidential,** and shall not be used except under the Scheme and the same shall not be shared with any other person / government department / agency.

B. Immunities, where assessment order has been issued:

- Immunity from interest in relation to declared tax for the period after issuance of assessment order till the date of declaration
- Immunity from prosecution
- Immunity from penalty or any other proceedings in relation to declared tax

C. No Immunities under this Scheme:

- Interest stated in the assessment order
- Interest and penalty not related to declared tax
- Penalty which has no relation to tax deficiency. For example, where penalty has been imposed for late filing of Returns or other documents or for non-maintenance of stock records, etc, such cases would not be covered within the scope of VVAS.

FALSE DECLARATION

Where the Commissioner has reasons to believe that the declaration was false in material particular, he may serve notice on the declarant, within one year from the date of declaration, in respect of such declaration. He may require the declarant to show cause why he should not be required to pay the tax dues unpaid or short-paid as per provisions of the Scheme.

If the Commissioner is satisfied that the declaration made by the declarant was substantially false, then benefit of this Scheme shall not available to the declarant. Such declarant may be proceeded u/s 89(2) of the Act for furnishing of false declaration.

MISCELLANEOUS

DSC/VVAS introduced by the Delhi Government is certainly an innovative and futuristic Scheme. It would increase the number-base of the dealers registered with the DVAT Department; and help in reducing existing disputes/litigations. Inspite of few issues already discussed, it is a welcome move.

A help desk under supervision of Sh. C. Arvind, Additional Commissioner (T & T) will function upto 30th November 2013 to help in estimating tax dues by the dealers.
For any further queries, please contact Special Commissioner (Policy), Room Number 304, Trade and Taxes Department, Vyapar Bhawan, I P Estate, New Delhi.

Disclaimer:

This paper is an attempt to answer the frequent queries in a simple language. However, for authentic legal interpretation please refer to the scheme Notified vide No. F.3(16)Fin(Rev-I)/2013-14/ds VI/786 dated 20.09.2013