

Tax Alert | Delivering clarity

8 December 2020

Second set of clarifications issued in relation to Vivad se Vishwas Scheme

The Central Board of Direct Taxes has issued Circular 21, dated 4 December 2020, to provide second set of clarifications in relation to the Vivad se Vishwas Scheme (VSV Scheme), to provide clarity and resolve certain contentious issues in relation to eligibility of the scheme, computational aspects and procedural / consequential issues.

Background:

The Direct Tax Vivad Se Vishwas Act, 2020¹ ('the VsV Scheme'), enacted on 17 March 2020, offers taxpayers a one-time window to settle their pending income tax litigation. Announced in Budget 2020, the VsV Scheme offers waiver from certain interest and penalty, to the taxpayer (as provided under the VsV Scheme) on payment of certain minimum amount (as provided under the VsV Scheme); if the said Scheme was availed by 31 March 2020. The deadline date has since then been extended twice and now taxpayers can apply for settlement of their tax disputes until 31 December 2020.

Based on representations received from various stakeholders, the Central Board of Direct Taxes (CBDT) had issued a list of 55 frequently asked questions (FAQs) in April 2020² to clarify various aspects of the VsV Scheme. Subsequently, the 15 days timeline to make tax payment as determined by Revenue authorities was relaxed in October 2020; the taxpayers can now deposit the amount due under the VsV Scheme on or before 31 March 2021, without any additional payment³.

Now, the CBDT has issued another set of FAQs vide Circular No. 21 of 2020⁴ dated 4 December 2020 to provide answers to additional 34 questions with a view to remove difficulties faced by taxpayers in applying the VsV Scheme with reference to their tax disputes.

Below is a summary of the additional clarifications provided by the CBDT in relation to eligibility of the scheme, computational aspects and procedural / consequential issues.

Clarifications provided by the Circular:

Eligibility to the VsV Scheme

- **Eligible cases**

The following cases will be eligible / covered under the VsV Scheme:

¹ <http://egazette.nic.in/WriteReadData/2020/218716.pdf>

² https://www.incometaxindia.gov.in/communications/circular/circular_no_9_2020.pdf

³ https://www.incometaxindia.gov.in/communications/circular/circular_18_2020.pdf

⁴ <https://www.incometaxindia.gov.in/communications/circular/circular-21-of-2020.pdf>

- Cases where an eligible appeal is disposed after 31 January 2020 and before filing the VsV Form
 - Computation of disputed tax shall be considering the position as on 31 January 2020
- Cases where the enforceability of an assessment order has been stayed by High Court / Supreme Court
- Appeal / writ petition against the order under section 263 of the Income-tax Act, 1961 ('ITA') (relating to revision of orders prejudicial to the Revenue) which contains specific directions and where income is quantifiable
- Belated appeals subject to the following criteria:
 - Time limit to file appeal had expired between 1 April 2019 to 31 January 2020 (both dates included);
 - Condonation application was filed before 4 December 2020; and
 - Appeal is admitted by the appellate authority before filing the declaration under the VsV Scheme
- Cross objections (filed and pending as on 31 January 2020) along with main appeal
- Miscellaneous application (MA) pending as on 31 January 2020 wherein appeal was dismissed in limine
 - Computation of disputed tax shall be with reference to the appeal dismissed
- Appeal, writ or special leave petition (SLP) in respect of block assessment made under section 158BA of the ITA will be eligible if disputed tax does not exceed INR 50 million for the said block assessment
- Cases where declaration / application filed under section 158A / 158AA of the ITA (relating to identical question of law being pending before the High Court / Supreme Court) on or before 31 January 2020
- Cases where appeal against assessment order is pending (or time limit to file appeal against order has not expired) as on 31 January 2020 and where taxpayer has also filed application for resolution under Mutual Agreement Procedure (MAP) which is pending, or where the MAP decision has not been accepted by the taxpayer
- Appeal / writ / SLP against the order of the Authority for Advance Rulings (AAR) filed by the Revenue is pending and where income is quantifiable based on facts before the AAR. In such cases, since the issue is covered in favour of the taxpayer, only 50% of the disputed tax is payable
- Appeal in relation to set aside cases before Commissioner of Income-tax (Appeals) [CIT(A)] / Dispute Resolution Panel (DRP) and pending as on 31 January 2020
- Appeal against intimation under section 143(1) of the ITA (relating to intimation of processing of income-tax return) except where adjustments relate to arithmetical errors or apparent incorrect claims in the income-tax return

- Appeal filed under section 248 of the ITA wherein taxpayer denies liability to deduct tax in certain cases
- Prosecution instituted for a year other than the year for which VsV Scheme is proposed to be opted
- Cases where prosecution instituted by the Revenue has been held to be in taxpayer's favour by appellate authorities; the time limit for filing appeal by the Revenue has passed and the Revenue has not appealed the same further.

- **Non-eligible cases**

The following cases shall not be eligible / covered under the VsV Scheme:

- Proceedings in relation to Income-tax Settlement Commission (whether pending or where writ has been filed)
- Appeal against denial of registration to a Trust under section 12AA of the ITA
- Assessment order based on search conducted in some other taxpayer's case to be considered as a 'search case'. Eligibility subject to the maximum threshold of INR 50 million
- Prosecution instituted due to tax deduction at source (TDS) default
- Appeal in relation to an assessment year where prosecution is instituted even on issues which are not the subject matter of appeal.

Computational aspects

- Enhancement notice issued by CIT(A) post 31 January 2020⁵
 - Notice issued after 31 January 2020 but before 4 December 2020 to be considered in computing disputed tax.
- Appeals pending against both assessment and reassessment proceeding on the same issue
 - Both appeals to be settled together and disputed tax to be paid only once; higher of the two tax liabilities to be paid.
- Adjustment of prepaid taxes against disputed and undisputed tax liability
 - Prepaid taxes identifiable against a source of income will be adjusted against said income
 - Prepaid taxes not identifiable will be apportioned against remaining tax liability.
- Additional grounds filed on or before 31 January 2020 to be considered in computing disputed tax.

Consequential issues

- Penalty not related to quantum assessment should be settled separately e.g. penalty for non-furnishing of details / documentation / not reporting.

⁵ The VsV Scheme already provides for inclusion of amounts related to enhancement notice issued prior to 31 January 2020.

- Settlement of appeal pending against addition made under section 68 of the ITA in relation to loans – capitalisation in books is not allowed.
- Immunity from prosecution shall extend to director / partner in case of issues settled by the company / firm, respectively.
- TDS proceedings under section 201 of the ITA
 - Settlement of appeal wherein disallowance under sections 40(a)(i)/(ia) of the ITA was made, consequential relief under section 201 of the ITA will not be allowed.
 - Consequential relief to be given to deductor / deductee in case where TDS was not deducted and appeal is settled by either party. While the declarant will get waiver of interest and penalty, however, the other party would be required to pay interest and penalty – which can be separately settled under VsV by paying 25% / 30% of such interest and penalty, as the case may be .
 - Tax credit in the hands of deductee cannot be more than 100% of the disputed tax, even if additional tax is deposited after 31 March 2021 under the VsV Scheme.
 - Taxpayer will not be eligible to claim deduction under the VsV Scheme, if deduction under section 40(a)(i)/(ia) of the ITA is already claimed in a subsequent year.
- Where the declarant has filed declaration for disputed penalty under the VsV Scheme, once the required amount of disputed penalty has been paid, interest relating to such disputed penalty will be waived.

Procedural Issues

- Taxpayers can revise original declaration multiple times until a certificate in Form 3 as per section 5(1) (of the VsV Scheme) is issued by the Designated Authority
- Taxpayers to file a single declaration to settle dispute with reference to separate orders passed under section 201(1) of the ITA (relating to principal portion) and under section 201(IA) (relating to the interest on the principal) for the same assessment year; interest u/s 201(1A) of the Act will be waived.

Comments:

The VsV Scheme is an opportunity for taxpayers to review and evaluate their pending income-tax disputes in India. With many of the eligibility and computational related aspects now clarified, the second set of FAQs are likely to aid taxpayers to adopt a pragmatic and rational decision with reference to their tax dispute matters.

As per information available on public domain⁶, 45,855 declarations have been filed under the VsV Scheme up to 17 November 2020 and a total of INR 724,800 million had been paid by taxpayers until then.

⁶ <https://twitter.com/IncomeTaxIndia/status/1329647421882658825>

While the Revenue authorities have launched e-campaigns and are conducting webinars to promote the VsV Scheme, a centralised redressal mechanism will be helpful to promptly address taxpayers' queries, adopting a uniform approach. Some of the key aspects which still need clarity include timelines within which refunds will be released to taxpayers, the manner in which consequential effects will be given on other impacted years, etc. It is also seen that on ground resolving rectification issues and orders giving effects, are taking time. Therefore, extending the deadline beyond 31 December 2020 to avail of this scheme, would be a welcome move.



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