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The Direct Tax Vivad se Vishwas Bill, 2020

Bill introduced for resolution of disputed direct tax

Background:

The Finance Minister while tabling Union Budget 2020 before the Parliament on 1 February 2020 stated that in the past the government had taken several measures to reduce tax litigation. "Sabka Vishwas Scheme" was introduced in Budget 2019 to reduce litigation in indirect taxes which resulted in settling over 1,89,000 cases.

As on 30 November 2019, disputed direct tax arrears amounted to INR 9,320 billion compared to the actual direct tax collection in the financial year 2018-19 of INR 11,370 billion, nearly a year's direct tax collection. About 4,83,000 cases are estimated to be pending at various appellate forums. In light of the above, the Finance Minister proposed to bring a similar scheme for reducing litigation in the direct taxes "Vivad Se Vishwas" Scheme (the Scheme). Consequently, on 5 February 2020, the "Vivad Se Vishwas Bill 2020" (VSV Bill) was introduced in the Lok Sabha (i.e. the Lower House of the Parliament) to provide for resolution of disputed tax arrears and for matters connected therewith or incidental thereto.

Key highlights:

The key features of the VSV Bill are highlighted below:

Filing of declaration

In order to avail the scheme the taxpayer (those who have filed appeals before the appellate forum and such appeal is pending as on 31 January 2020) shall be required to file a declaration on or before the last date (to be notified), with the Designated Authority (DA) (an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner) in respect of determined tax arrears consisting of disputed tax, disputed interest, disputed penalty or disputed fees.

Determination of disputed tax

Disputed tax in relation to an assessment year will be calculated as mentioned below:

- Formula **(A-B) + (C-D)** where:
 - **A** = Amount of tax on the total income assessed as per income tax provisions (General provisions) other than under Section 115JB or 115JC of the Income tax Act, 1961 (the Act).
 - **B** = Amount of tax chargeable on the total income assessed as per general provision reduced by amount of income in respect of which appeal has been filed by the appellant (i.e. the person or the income-tax authority or both who has filed appeal before the appellate forum and such appeal is pending on 31 January 2020).
 - **C** = Amount of tax on the total income assessed under Section 115JB or 115JC.
 - **D** = Amount of tax chargeable on the total income assessed under Section 115JB or 115JC, reduced by amount of income in respect of which appeal has been filed by the appellant.

Amount of income under appeal which is considered under section 115JB or section 115JC as well as under general provisions, not to be reduced from total income assessed while determining the amount under item D above.

The item (C – D) above to be ignored where the provisions under section 115JB or section 115JC are not applicable.

Where amount of income under appeal results in reduction of loss declared in the return or converting that loss into income, the amount of tax to be determined in the item (A-B) above shall be amount of tax on the income under appeal had such income been the total income.

- Tax determined based on:
 - Processing of statements of tax deducted at source (Section 200A)
 - Consequences of failure to deduct tax or pay withholding tax (Section 201)
 - Consequences of failure to collect tax at source in certain cases (section 206C(6A))
 - Processing of statement of tax collected at source (Section 206CB).

Amount payable

The amount payable on filing the declaration is given below:

Sr No. (A)	Nature of tax arrear (B)	Amount payable under the VSV Bill (on enactment) on or before 31 March 2020 (C)	Amount payable under the VSV Bill (on enactment) on or after the 1 April 2020 but before the last date (D)
(a)	Where tax arrear consists of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax	Amount of disputed tax	Disputed tax plus ten percent of disputed tax. Where ten percent of disputed tax exceeds the aggregate amount of interest chargeable/ charged and penalty leviable/ levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.
(b)	Tax arrear relates to disputed interest or disputed penalty or disputed fee	25 percent of disputed interest or disputed penalty or disputed fee	30 percent of disputed interest or disputed penalty or disputed fee

Filing of declaration and particulars

- The declaration shall be filed by the declarant before the DA in such form and manner to be prescribed.
- Once the declaration is filed, any appeal pending before CIT(A) or the Income tax Appellate Tribunal (ITAT) [whether by the taxpayer or by the income-tax authority], in respect of the disputed income / interest / penalty / fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate is issued by the DA.
- Where the declarant (means a person who files declaration) has filed any appeal before
 - Appellate forum (CIT(A)/ ITAT/ High Court/ Supreme Court); or
 - Writ petition before the High Court or the Supreme Court against any order in respect of tax arrear,

he shall withdraw such appeal or writ petition with the leave of the Court, wherever required and furnish proof of such withdrawal along with the declaration.

- Where the declarant has initiated any proceeding for
 - Arbitration
 - Conciliation
 - Mediation
 - Given any notice under any law for the time being in force
 - Given any notice under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise,he shall withdraw the claim in such proceedings or notice, prior to making the declaration and furnish proof thereof along with the declaration.
- The declarant shall furnish an undertaking waiving his right, to seek or pursue any remedy or any claim in relation to the tax arrear which may otherwise be available to him under the statute or under any agreement as referred to above.
- The declaration shall be presumed never to have been made if,
 - any material particular furnished in the declaration is found to be false at any stage;
 - the declarant violates any of the conditions referred to in the enacted provisions of the VSV Bill;
 - The declarant acts in a manner contrary to the undertaking filed.In such cases, all the withdrawn proceedings and claims and all the consequences under the Act shall be deemed to have been revived.
- No appellate forum or arbitrator, conciliator or mediator shall proceed to decide the issue in appeal relating to the tax arrear mentioned in the declaration in respect of which an order has been passed or the payment of sum as determined by the DA.

Procedure, time, and manner of payment

- The DA shall pass an order determining the amount payable and grant a certificate to the declarant within 15 days from the receipt of declaration.
- The declarant shall pay the amount so determined within 15 days of receipt of certificate. The declarant to intimate the details of payment to the DA which shall pass an order stating the payment by the declarant.
- No matter covered by the DA's order shall be reopened in any other proceedings.

Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases

- The DA shall not institute any proceeding in respect of an offence or impose or levy any penalty or charge any interest in respect of tax arrears.

Refund

- The amount paid pursuant to declaration is not refundable.

Non-applicability of provisions

The provisions of VSV Bill should not apply:

- In respect of tax arrears relating to:

- Assessment made under Search or requisition (Section 153A) and assessment of income of any person other than on whom proceedings of search or requisition are undertaken (Section 153C),
 - Prosecution proceedings instituted before the date of filing of declaration,
 - Undisclosed income from a source or undisclosed asset located outside India,
 - Assessment or reassessment made on the basis of information received under an agreement referred in Section 90 or Section 90A of the Act,
 - Where notice of enhancement has been issued by the CIT(A) before 31 January 2020.
- To any person on whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling activities Act, 1971 on or before filing of declaration with the DA, subject to fulfillment of specified conditions.
 - To any person in respect of whom prosecution for any offence punishable under specified legislations have been instituted on or before filing of the declaration.
 - To any person notified as Custodian under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

The Central Board of Direct Taxes may issue directions or orders to the income-tax authorities as it may deem fit, including on matters of collection of revenue, procedures to be followed as is necessary in the public interest. The Central Government may pass any order to remove difficulties arising to give effect to this law, after being laid before each House of Parliament.

No such order shall be made after the expiry of a period of two years from the date on which the provisions of this VSV Bill come into force.

Observations/ Comments:

Considering significant amounts locked up in litigation on direct taxes, this scheme should be a welcome relief for both taxpayers and the government as by paying the disputed tax amount, the taxpayer will be saved from litigation, interest, penalty and cost of litigation.

The timeline appears to be quite stringent as the Bill is yet to be enacted and payment of disputed tax is expected by 31 March 2020 to seek relief under the Act.

Under the Sabka Vishwas (legacy Dispute Resolution) Scheme 2019, relief available as percentage of tax dues are as under:

Tax dues linked to	INR 50 lakhs or less	More than INR 50 lakhs
(a) Show cause notice (SCN) / appeal pending as on 30.06.2019	70 %	50 %
(b) SCN issued only with respect to late fee/ penalty, and tax amount is paid or NIL	Entire amount of late fee/ penalty	
(c) Amount relating to arrears of tax or amount indicated in returns but not paid	60 %	40 %

(d) Enquiry/ investigation/ audit and amount quantified on or before 30.06.2019	70 %	50 %
(e) Voluntary disclosure by the declarant	No tax relief except interest & penalty	

Source: <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/in-tax-sabka-vishwas-scheme-noexp.pdf>

As can be observed, there was relief in disputed tax amount provided under the Sabka Vishwas Scheme 2019 while under the VSV Bill, the relief provided is only for interest and penalty while 100 percent of the income-tax is required to be paid.

Clarity required on certain aspects like:

- The manner of withdrawal of appeals filed by the Income tax authorities before High Court or Supreme Court, as in such cases there should generally be no tax arrears.
- Where the loss as per return of income is reduced by the AO, the disputed tax is calculated on the amount of tax that would have been chargeable on income in respect of which appeal has been filed had such income been the total income. Clarity should be provided that where the loss as per return of income is reduced, then there should be no disputed tax liability and the lower loss should be allowed to be carried forward for set-off to subsequent years without any charge to interest or penalty in subsequent years.
- Whether refund of remaining 75 percent or 70 percent as the case may be of the declared disputed interest or disputed penalty, would be granted, where the entire amount of disputed interest or disputed penalty is paid before enactment of the VSV Bill.
- Withdrawal of litigation on specific grounds as against the entire appeal for an assessment year.
- Effect of appeals withdrawn for the earlier years on the assessment of the future assessment years.



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