



Tax alert: Additional FAQs on Direct Tax Vivad se Vishwas Scheme, 2024

18 December 2024

The Central Board of Direct Taxes vide Circular No. 19 of 2024 dated 16 December 2024 has issued Guidance Note 2/2024 in the form of answers to frequently asked questions (FAQs) in relation to the provisions of the Direct Tax Vivad se Vishwas Scheme, 2024 introduced vide Finance (No.2) Act, 2024.

Background:

- The Finance (No.2) Act, 2024 introduced Direct Tax Vivad se Vishwas Scheme, 2024 (Scheme) to provide for dispute resolution in respect of pending income tax litigation. The Scheme provides for settlement of certain disputes pending as on specified date i.e., 22 July 2024.
- The Central Board of Direct Taxes (CBDT) had notified¹ 1 October 2024 as the commencement date of the Scheme and issued² the relevant Rules and Forms for enabling the Scheme.
- After enactment of the Scheme, several queries were received from stakeholders seeking guidance in respect of various provisions contained therein. In this regard, the CBDT recently vide Circular No. 12 of 2024 had issued Guidance Note 1/2024 in the form of answers to certain frequently asked questions (FAQs).
- However, several other queries have been received from stakeholders for clarification. Thus, the CBDT has now issued Guidance Note 2/2024 vide Circular No. 19 of 2024 dated 16 December 2024 to provide further clarification.

Highlights of the Circular:

The Circular has issued the following key clarifications, in FAQ form:

Eligibility of cases

- 1) *Suppose a taxpayer is eligible to apply for the Scheme as appeal is pending as on specified date. But subsequently, before the taxpayer could file declaration under the Scheme, appeal is disposed off on merits or dismissed as withdrawn for the purposes of the Scheme. Can such a taxpayer still file a declaration under the Scheme? [FAQ No. 36]³*

Yes, such cases are eligible for settlement under the Scheme as appeal was pending as on specified date. Disputed tax will be calculated in the same manner as if the appeal pending on specified date is yet to be disposed off.

¹ Vide Notification No. 103/2024 dated 19 September 2024

² Vide Notification No. 104/2024 dated 20 September 2024

³ FAQ No. 8 of the Guidance Note 1/2024 has been modified and incorporated as FAQ No. 36. Thus, FAQ No. 8 of the Guidance Note 1/2024 shall be considered as omitted.

2) *Suppose a taxpayer has filed a declaration in Form 1. After the declaration, the appeal has been disposed off by the concerned authority. Whether such a case is eligible for settlement? [FAQ No. 37]*

Yes, such a case is eligible for settlement.

3) *Time limit for filing of appeal has expired before specified date but an appeal along with application for condonation of delay has been filed after specified date. Whether the taxpayer can opt for the Scheme in such a case? [FAQ No. 38]*

No. Appeal has to be pending as on specified date for a taxpayer to opt for the Scheme. Thus, where an appeal along with application for condonation is filed after specified date, it does not tantamount to pendency of appeal as on specified date. Accordingly, such cases shall not be eligible.

4) *Suppose an appeal has been filed before specified date with an application for condonation of delay which is also filed before specified date. The appeal has been admitted by allowing condonation of delay prior to the date of filing of declaration under the Scheme. Whether such a taxpayer can opt for the Scheme? [FAQ No. 39]*

Yes. In such cases where the appeal as well as condonation application have been filed on or before specified date. On admission of condonation application, such cases convert into an appeal pending on specified date. Therefore, the taxpayer can opt for settlement under the Scheme in such cases.

5) *Whether appeal filed against intimation under section 143(1) of the Income-tax Act, 1961 (ITA) and pending as on specified date is eligible for the Scheme? [FAQ No. 41]*

Yes. Any appeal filed against intimation under section 143(1) of the ITA and pending as on specified date is eligible for settlement under the Scheme.

6) *Where review petitions are pending before High Courts or Supreme Courts, whether those cases be eligible for settlement under the Scheme? [FAQ No. 44]*

No. Pendency of review petition does not tantamount to pendency of an appeal. Therefore, even if a review petition is pending as on specified date, it will not amount to pendency of an appeal.

7) *Whether the Scheme can be availed in a case where proceedings are pending before Income Tax Settlement Commission (ITSC) or where writ has been filed against the order of ITSC? [FAQ No. 45]*

No.

Set-aside appeal

8) *Appeal has been set aside to Income-tax Appellate Tribunal (ITAT)/ Commissioner of Income-tax (Appeal) [CIT(A)]/Dispute Resolution Panel (DRP) and was pending on specified date. Whether in such cases the taxpayer can opt for the Scheme ? [FAQ No. 47]*

As per FAQ No.24 of Guidance Note 1/2024, a matter set aside for the Assessing Officer (AO), is not an appeal pending as such. Therefore, set-aside matters to the AO, whether fully set-aside or partially set-aside are not covered under the Scheme.

However, where an appeal has been set aside fully to ITAT/CIT(A)/DRP, such appeals will be eligible for settlement. Also, where an appeal has been partially set-aside to ITAT/CIT(A)/DRP, all the issues which have been set-aside will form a separate appeal and shall be eligible for settlement as such and disputed tax will be computed as if pending at the level to which it is set-aside.

Disputed Penalty

9) *Suppose penalty has been levied after the taxpayer has filed a declaration for the settlement of the associated quantum appeal. In such a case, whether on settlement of tax arrears of the quantum appeal, penalty in relation to such tax arrears would be waived off? [FAQ No. 52]*

As per the definition of tax arrears under the Scheme, interest chargeable or charged and penalty leviable or levied are included in tax arrears. However, the settlement for quantum appeal is made as a percentage of disputed tax, where disputed tax means income-tax including surcharge and cess. Thus, penalty leviable or levied are not included in disputed tax for settlement of quantum appeal.

Accordingly, on settlement of quantum appeal, the Designated Authority will grant immunity from penalty leviable or levied in respect of tax arrears settled under the Scheme.

10) *Suppose in a case, the additions made in assessment have reached finality. There is no quantum appeal pending as on specified date. However, penalty appeal is pending as on specified date which relates to the additions made in the assessment order. Can a penalty appeal be settled independent of quantum appeal? [FAQ No. 53]*

Penalties which are unrelated to quantum additions are clearly eligible for settlement where an appeal in respect of such penalty is pending as on specified date. These penalties are unrelated to quantum additions and therefore, can be settled independently of quantum appeals.

Further, where the additions made in an assessment have reached finality and thus, there is no quantum appeal pending as on specified date, there is no disputed income or disputed tax as on the specified date. Therefore, such penalty can be settled separately under the Scheme⁴.

11) *Whether appeal against penalties that are not related to quantum assessment like penalty under section 271B, 271BA, 271DA of the ITA etc., are also waived upon settlement of appeal relating to disputed tax? [FAQ No. 54]*

No, appeal against such penalty order is required to be settled separately.

Taxes paid before filing declaration

12) *Whether credit for earlier taxes paid against disputed tax will be available against the payment to be made under the Scheme? [FAQ No. 56]*

Yes. Credit for taxes paid against disputed tax before filing declaration shall be available to the declarant.

13) *In such cases, where appeal is pending as on specified date but disputed tax demands have been already fully paid before filing of declaration. Are such cases eligible for the Scheme? [FAQ No. 57]*

Yes. The situation is covered under section 94(2) of the Scheme. Accordingly, such cases shall be eligible for the Scheme.

TDS related queries

14) *In cases where deductee has settled his appeal, whether deductor would be relieved from its liability under section 201(1) of the ITA. Further, whether deductor would be allowed to claim expense deduction under section 40(a) of the ITA ? [FAQ No. 58]*

Where a deductee has settled his tax liability, the deductor is relieved from his liability other than interest payable. However, consequential relief for expense deduction under section 40(a) of the ITA shall be available to such deductor.

15) *Whether appeals filed before the Appellate Authority against intimation passed under section 200A of the ITA (regarding intimation on processing of TDS returns) can be settled under the Scheme? [FAQ No. 59]*

Yes, if appeal in respect of intimation under section 200A of the ITA is pending as on specified date.

⁴ Under clause (c) and (d) of Section 90 of the Scheme

Miscellaneous

16) *Where appeal is pending in respect of primary assessee which is a foreign entity not having business presence in India. Whether such foreign entity can file declaration and settle its dispute through its representative assessee having presence in India? [FAQ No. 61]*

Yes, with proper authorization, a representative assessee can opt for settlement under the Scheme. Even in the case of a deceased taxpayer, the legal representative may also opt for settlement under the Scheme.

17) *If the taxpayer avails DTVS Scheme, 2024 for Transfer Pricing adjustment, will provisions of section 92CE of the ITA apply separately? [FAQ No. 62]*

Yes, secondary adjustment under section 92CE will be applicable. However, it may be noted that the provision of secondary adjustment as contained in section 92CE of the ITA is not applicable for primary adjustment made in respect of an Assessment Year (AY) commencing on or before the 1 April 2016. That means, if there is any primary adjustment for AY 2016-17 or earlier AY, it is not subjected to secondary adjustment under section 92CE of the ITA.

Comments:

The Guidance Note will provide more clarity to taxpayers with respect to provisions of the Scheme.

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