



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

21 October 2024

The Central Board of Direct Taxes vide Circular No. 12 of 2024 dated 15 October 2024 has issued Guidance Note 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 has 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.
- Recently, the Central Board of Direct Taxes (CBDT) has notified¹ 1 October 2024 as the commencement date of the Scheme and has issued² the relevant Rules and Forms for enabling the Scheme.
- After enactment of the Scheme, several queries were received from the stakeholders seeking guidance in respect of various provisions contained therein. Accordingly, the CBDT vide Circular³ has now issued a Guidance Note in the form of answers to certain frequently asked questions (FAQs).

Highlights of the Circular:

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

Rollback years

1) *Whether taxpayer can settle few years under the Scheme out of 4 roll back years of the Advance Pricing Agreement (APA)? [FAQ No. 7]*

As per the Circular⁴, the taxpayer does not have the option to choose the years to apply for rollback i.e., the taxpayer can either apply for all the 4 years or not apply at all. However, if the covered international transaction did not exist in a rollback year or there is some disqualification in a rollback year, then the taxpayer can apply for rollback for less than 4 years.

Thus, in certain exceptions the rollback period could be less than 4 years also. On the same analogy, if few years are settled in the Scheme, the rollback can be applied for the remaining years.

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

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

³ CBDT Circular No.12 of 2024 dated 15 October 2024

⁴ CBDT Circular No. 15/2015 dated 10 June 2015

Appeal disposed off

- 2) *Suppose a taxpayer is eligible to apply for the Scheme as appeal is pending on specified date. But subsequently, before the taxpayer could file declaration under the Scheme, appeal is disposed off. Can such a taxpayer still file a declaration? [FAQ No. 8]*

Where a decision has been given prior to the taxpayer filing a declaration, there is no dispute pending unless the taxpayer or the department again prefers an appeal. Therefore, where an appeal is pending as on specified date but is not pending as on the date of making declaration under the Scheme, such cases shall not be eligible for the Scheme. However, in cases where a taxpayer files declaration under the Scheme and intimates the same to the appellate authority, the concerned appellate authority may consider not disposing the appeal of the taxpayer.

Time limit to file appeal not expired on specified date

- 3) *Whether cases where taxpayer has received orders but time limit to file an appeal/special leave petition (SLP) has not expired as on specified date, can be covered under the Scheme? [FAQ No. 9]*

The Scheme does not provide for eligibility of the cases where an appeal is not pending as on the specified date except for Dispute Resolution Panel (DRP) case, where the DRP has issued directions under section 144C(5) of the Income-tax Act, 1961 (ITA) but the Assessing Officer (AO) has not completed the assessment under section 144C(13) of the ITA.

Settling issues in part

- 4) *Whether the taxpayer can apply for the Scheme in case the disputed tax contains qualifying tax arrears along with non-qualifying tax arrears? [FAQ No. 10]*

The Scheme does not envisage settling issue in part. The dispute has to be settled in full. Thus, where there are non-qualifying tax arrears, such disputes are not eligible to be covered under the Scheme.

Settling penalty appeal while quantum appeal pending

- 5) *Can a taxpayer settle penalty appeal while continuing to litigate the associated quantum appeal? [FAQ No. 11]*

As per the Scheme, the disputed penalty is such penalty which is not levied or leviable in respect of disputed income or disputed tax. Thus, it would not be possible for the taxpayer to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending.

If both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year (AY) are pending, the taxpayer is required to file a declaration form giving details of both disputed tax appeal and penalty appeal. However, he would be required to pay relevant percentage of disputed tax only.

Interest waiver application

- 6) *With respect to interest under section 234A, 234B or 234C of the ITA, there is no appeal, but the taxpayer has filed waiver application before the competent authority which is pending as on specified date. Will such cases be covered under the Scheme? [FAQ No. 15]*

A taxpayer who has filed a waiver application is not an appellant as per the Scheme. Therefore, such cases are not covered.

Refund issues

- 7) *Whether taxpayers can settle appeals under the Scheme using refunds which they are expecting from the department? [FAQ No. 17]*

There is no provision in the Scheme allowing payment of the amount determined under the Scheme through adjustment of any refund expected from the department.

8) *If taxes are paid after availing the benefits of the Scheme and later the taxpayer decides to take refund of the taxes paid, would it be possible? [FAQ No. 18]*

No. Any amount paid in pursuance of a declaration made under the Scheme shall not be refundable under any circumstances as per the Scheme.

Tax Deducted at Source (TDS)/ Tax Collected at Source (TCS) issues

9) *Will delay in deposit of TDS/TCS be also covered under the Scheme? [FAQ No. 19]*

The disputed tax includes tax related to TDS and TCS which are disputed and pending in appeal. However, if there is no dispute related to TDS or TCS and there is delay in depositing such TDS/TCS, then the dispute pending in appeal related to interest levied due to such delay will be covered under the Scheme.

10) *Where taxpayer settles TDS appeal against order under section 201 of the ITA as deductor of TDS, will credit of such TDS be allowed to deductee? [FAQ No. 20]*

Yes. However, the credit will be allowed as on the date of settlement of dispute by the deductor and hence, the interest as applicable to deductee shall apply.

11) *Where taxpayer settles his own appeal under the Scheme, will consequential relief be available to the deductor in default from liability determined under TDS order under section 201 of the ITA? [FAQ No. 21]*

Yes. In such a case, the deductor in default would not be required to pay the corresponding TDS amount. However, he would be required to pay interest under section 201(1A) of the ITA. If such levy of interest under section 201(1A) of the ITA qualifies for the Scheme, the deductor in default can settle the disputed interest by filling up the relevant schedule of disputed interest.

12) *Where taxpayer settles TDS liability as deductor under the Scheme (against order under section 201), when will he get consequential relief of expenditure under proviso to section 40(a)(i)/(ia) of the ITA? [FAQ No. 22]*

The deductor shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)/(ia) of the ITA in the year in which TDS was required to be deducted, if the disallowance under section 40(a)(i)/(ia) is with respect to same issue on which order under section 201 has been issued. However, if the taxpayer has already claimed deduction of the same amount under section 40(a)(i)/(ia) of the ITA in subsequent year on account of recovery of TDS in such subsequent year, he shall not be entitled to consequential relief on the basis of the settlement under the Scheme.

In case, in the order under section 143(3) there are other issues as well, and the taxpayer wants to settle the dispute with respect to order under section 143(3) of the ITA as well, then the disallowance under section 40(a)(i)(ia) of the ITA relating to the issue on which he has already settled liability under section 201 of the ITA would be ignored for calculating disputed tax.

Set aside matters

13) *An order has been set aside fully or partially to the AO. Can the taxpayer avail the Scheme if the set-aside matter is pending as on specified date? [FAQ No. 24]*

According to the Scheme, an appeal which is pending as on specified date shall be eligible for settlement. A set aside matter to the 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.

Two appeals for one AY

14) *Where there are two appeals filed for an AY in respect of the same order, one by the taxpayer and one by the tax department, whether taxpayer can opt for only one appeal? How would the disputed tax be computed in such a case? [FAQ No. 25]*

Yes. The taxpayer has an option to opt for settling appeal filed by him or appeal filed by the department or both. This has to be specified in the declaration made in Form 1. As per the proviso to Rule⁵, where the taxpayer and the income-tax authority have both filed an appeal or writ petition or SLP in respect of the same order, single declaration (Form 1) has to be filed by the taxpayer.

Accordingly, relevant schedules in Form 1 have to be filled out by the taxpayer and the disputed tax would be worked out.

15) *The assessment order under section 143(3) of the ITA was passed for an AY and the same is pending with Income-tax Appellate Tribunal (ITAT). Subsequently, another order under section 147/143(3) was passed for the same AY and that is pending with Commissioner of Income-tax (Appeals) [CIT(A)]. Could both or one of the order be settled under the Scheme? [FAQ No. 31]*

The taxpayer has an option to settle either of the two appeals or both appeals for the same AY. The declaration shall be filed separately in respect of each order. Therefore, if a taxpayer decides to settle both appeals then he has to file separate declaration for the two orders.

Writ on section 148/ 148A notice

16) *If a writ has been filed against a notice issued under section 148/148A of the ITA and no assessment order has been passed consequent to that notice, whether such cases are eligible under the Scheme? [FAQ No. 26]*

In such cases, the income is yet to be determined and therefore, the disputed tax is not ascertainable. Thus, the taxpayer would not be eligible for the Scheme in such cases.

Other issues

17) *If appeal is filed before HC or SC and is pending for admission as on specified date, whether the case is eligible for the Scheme? [FAQ No. 27]*

Yes

18) *Whether the Scheme can be availed in a case where the enforceability of an assessment order passed by AO has been stayed by the HC or SC? [FAQ No. 30]*

No. A quantum appeal pending on specified date can be settled under the Scheme. Where an assessment order has been stayed, it does not tantamount to an appeal pending as on specified date.

19) *Addition was made under section 143(3) of the ITA on two issues whereas appeal is filed only for one addition. Whether interest and penalty be waived for both additions? [FAQ No. 33]*

Under the Scheme, interest and penalty will be waived only in respect of the issue which is disputed in appeal and for which declaration is filed. Hence, for the undisputed issue, the tax, interest, and penalty shall be payable.

Comments:

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

⁵ Rule 4 of the Direct Tax Vivad se Vishwas Rules, 2024

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see <http://www.deloitte.com/about> to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which is a separate and independent legal entity, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Bengaluru, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Mumbai, New Delhi, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

This communication contains general information only, and none of DTTL, its global network of member firms or their related entities is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication.