



The Direct Tax - *Vivad se Vishwas* Bill, 2020

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Presenters

Subject matter experts



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Background



Background

1

FM announced 'Vivad Se Vishwas' scheme during her speech in the Union Budget, 2020. Subsequently the Direct Tax Vivad Se Vishwas Bill, 2020 placed before the parliament on 5 February 2020. The bill be debated in the Parliament before being enacted.

2

The Scheme inspired by success of Sabka Vishwas Scheme for settlement of indirect tax cases (1.89 lakh cases settled). The 'Vivad Se Vishwas' scheme seeks to address the 4.83 lakh pending direct tax cases before various authorities.

3

Declarant to pay only the tax amount and complete waiver of penalty and interest, if upto March 31 2020. However some additional amount if the same is paid by 30 June 2020.

The FM held meeting with industry and professional bodies / firms to understand the issues and may soon come out with clarifications or FAQs

Overview of provisions



Overview



Appeals filed by the Assessee and the Income-tax Department are covered under the Scheme. However, in the provisions regarding how the department appeal can be settled under the Scheme are not clear;



Tax payer appeals pending before the Supreme Court (including Writ Petitions), High Court (including Writ Petition), Income-tax Appellate Tribunal or the Commissioner (Appeals) are covered;



Matters involving arbitration, conciliation or mediation are also covered (based on international agreements)



Appeals should be pending as on 31 January 2020.



Amount under dispute needs to be computed based on a formula prescribed.

Act not to apply to certain cases



Tax Arrear on account of:

- Assessment made as a result of search and seizure
- Prosecution initiated before filing declaration
- Undisclosed foreign income / assets
- Information received as per section 90 or section 90A
- Enhancement notice issued by CIT(A) before 31 January 2020



Order passed under Conservation of Foreign Exchange and Prevention of Smuggling Activities



Prosecution for any offence punishable under certain acts for the purpose of enforcement of any civil liability



Person notified under section 3 of the Special Court Act, 1992 (Trial of Offences Relating to Transactions in Securities)

'Amount Payable' in respect of 'Tax Arrears'

I.

Tax Arrear = Disputed Tax + Interest + Penalty

Amount payable before 31 March 2020

- 100% of the disputed tax

Amount payable on or after 1 April 2020 but on or before the last date

- **Lower of**
 - 110% of the disputed tax; or
 - 100% of the disputed tax plus interest (charged/chargeable) and penalty (leviable / levied) on such disputed tax



II.

Tax Arrear = Disputed Interest + Disputed Penalty + Disputed Fee

Amount payable before 31 March 2020

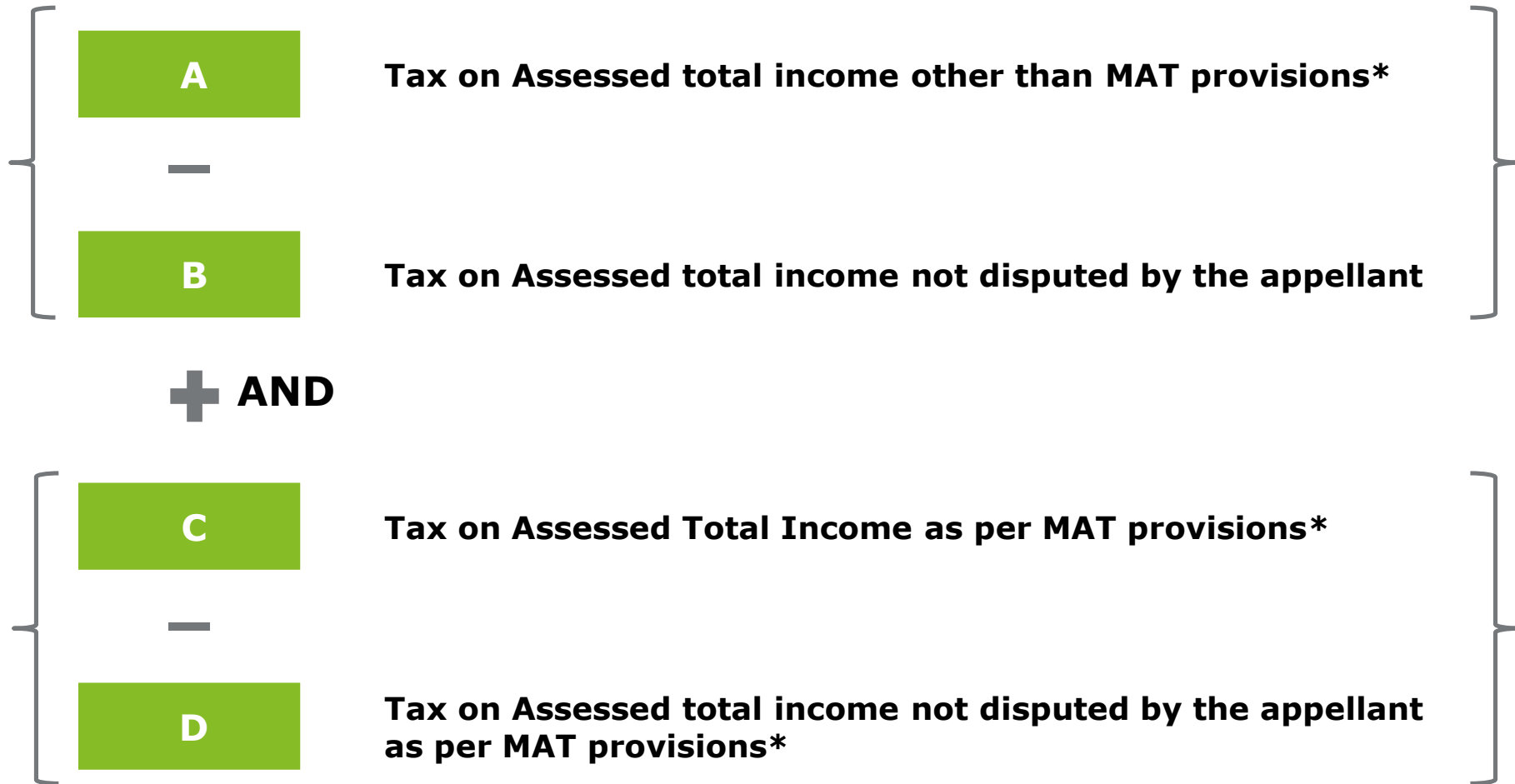
- 25% of disputed interest or disputed penalty or disputed fee

Amount payable on or after 1 April 2020 but on or before the last date

- 30% of disputed interest or disputed penalty or disputed fee

**Last date = As maybe notified by the Government
(30 June 2020 as per FMs budget speech)**

'Disputed Tax' (1/3) – as per regular provisions



* MAT provisions = Provisions of Section 115JB / 115JC of the Income-tax Act, 1961.

'Disputed Tax' (2/3)

In case of a loss situation

In case of a loss situation, (A) shall be replaced by the amount of tax that would have been chargeable on the income in respect of which appeal has been filed by the appellant had such income been the total income, ignoring the loss.

'Disputed Tax' (3/3) – tax determined based on

200A

Processing of statements of TDS

201

Consequences of failure to deduct tax or pay withholding tax

206C(6A)

Consequences of failure to collect tax at source in certain cases

206CB

Processing of statement of tax collected at source

Procedure



Procedure for appeals filed by **Taxpayer (Declarant)**

4(3) /
4(4)

Taxpayer to withdraw appeal from the Appellate forums. Taxpayer to also withdraw any proceedings for arbitration, conciliation or mediation.

4(1)

Taxpayer to file declaration in specified form along with proof of such withdraw of such appeal.

4(5)

Taxpayer to furnish an undertaking waiving his right direct or indirect to seek or pursue any remedy or claim in relation to the tax arrears under any law.

5(1)

Designated authority within 15 days to determine the amount payable by the Taxpayer.

5(2)

Taxpayer to pay the amount determined by the designated authority within 15 days and inform the designated authority of such payment made.

Procedure for appeals filed by **Department** before the **Tribunal**

4(1)

Taxpayer to file declaration in specified.

4(5)

Taxpayer to furnish an undertaking waiving his right direct or indirect to seek or pursue any remedy or claim in relation to the tax arrears under any law.

4(2)

Upon filing of the declaration, the appeal is deemed to have been withdrawn.

5(1)

Designated authority within 15 days to determine the amount payable by the Taxpayer.

5(2)

Taxpayer to pay the amount determined by the designated authority within 15 days and inform the designated authority of such payment made.

No procedure prescribed for Department appeals before HC and SC

Procedure & Consequences

Immunities

- Order passed by the designated authority to be conclusive as to matters mentioned therein and such matters cannot be reopened in any other proceedings.
- No institution of any proceedings in respect of an offence, penalty or interest.
- Appellate forums / arbitrator, conciliator or mediator not to decide the issue in respect of cases where an order is passed by the designated authority.

Procedure & Consequences

Other aspects

- The amount paid pursuant to declaration is not refundable
- CBDT may issue directions or orders to income-tax authorities as it may deem fit – matters of collection, procedure to be followed as necessary in the public interest, remove difficulties
- No such orders to be made after the expiry of a period of two years from the date on which the provisions of this Bill come into force

Open issues



Clarity required inter-alia, on following issues

1. Taxpayers' appeal and Department's appeal have been placed on the same footing.
2. How will the tax arrear (amount payable) be computed by the designated authority when the disputed tax / interest / penalty has already been partially / fully paid by the Taxpayer.
3. In case of department appeal before HC/SC, the bill is silent regarding the procedure for withdrawal of appeal by the Department.
4. Order passed by the CIT u/s 263 and consequential order pending to be passed by the assessing officer. Can the taxpayer settle the disputed amount without waiting for the consequential order as the demand can only be raised in the consequential order and how?
5. Effect of appeals withdrawn for the earlier years on the assessment of the future years
6. In a loss to loss situation, tax is payable under the Scheme on the amount by which loss is reduced. Will the taxpayer get benefit to carry forward the amount of loss on which the tax will be paid under the scheme and how will such carry forward mechanism work?
7. Withdrawal of litigation on specific grounds as against the entire appeal for an assessment year

Clarity required inter-alia, on following issues

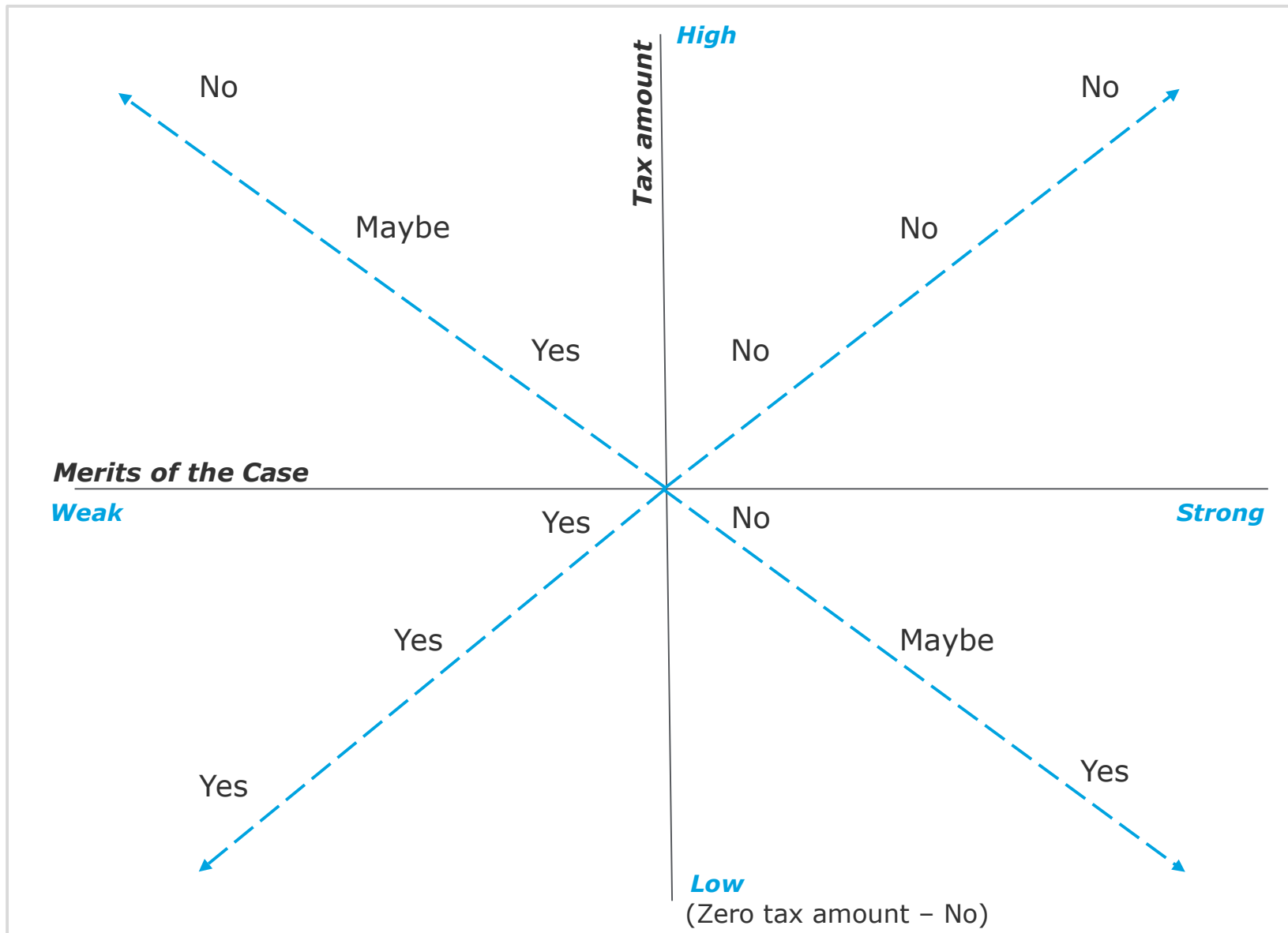
8. Relief under Sabka Vishwas Scheme 2019 as under, while under the VSV Bill, **relief provided is only for interest and penalty while 100% of income-tax is required to paid – this needs a rethought?**

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	

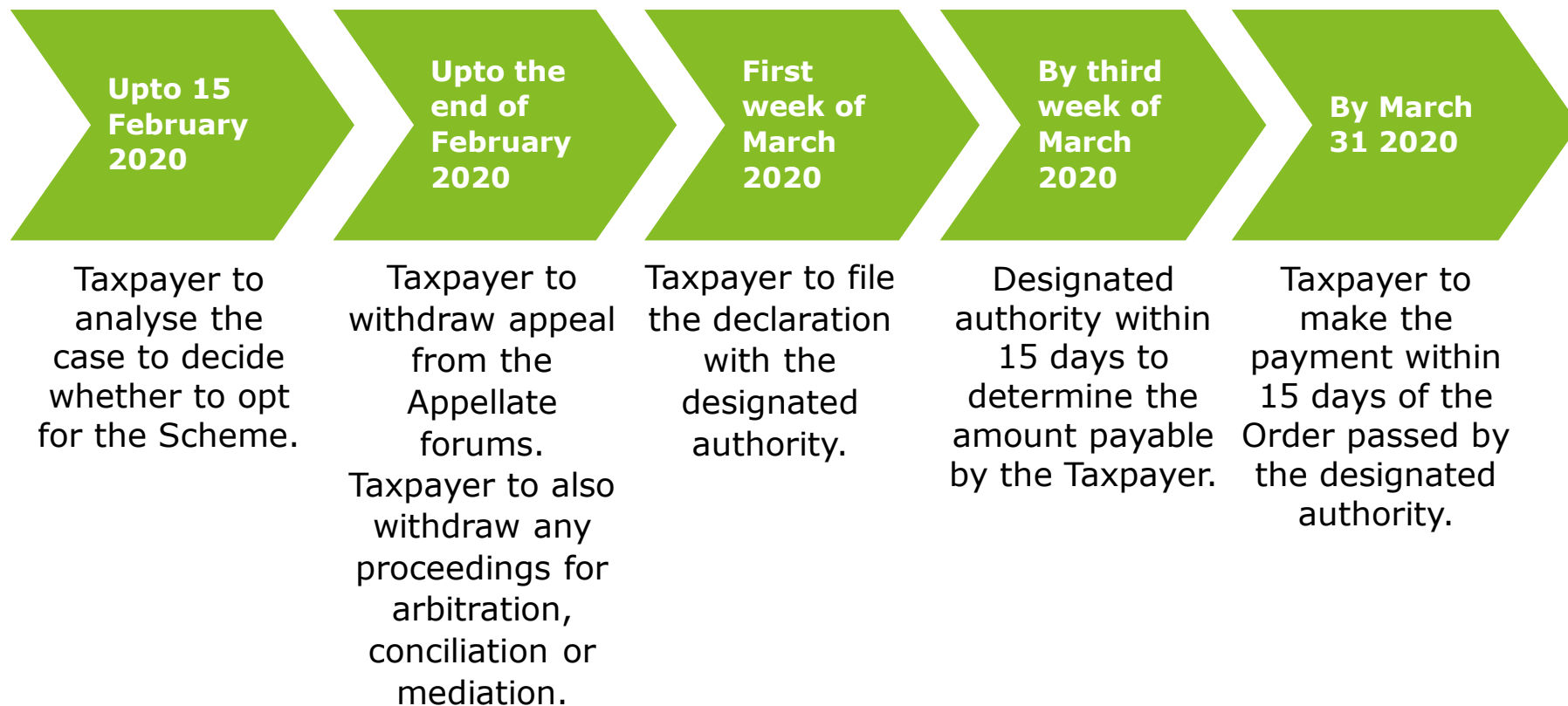
Next steps



Analysis of Taxpayers case – based on two factors:



Timelines



Q&A





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