



India tax litigation settlement scheme:
The Direct Tax Vivad se Vishwas Act, 2020

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Presenters

Government representatives



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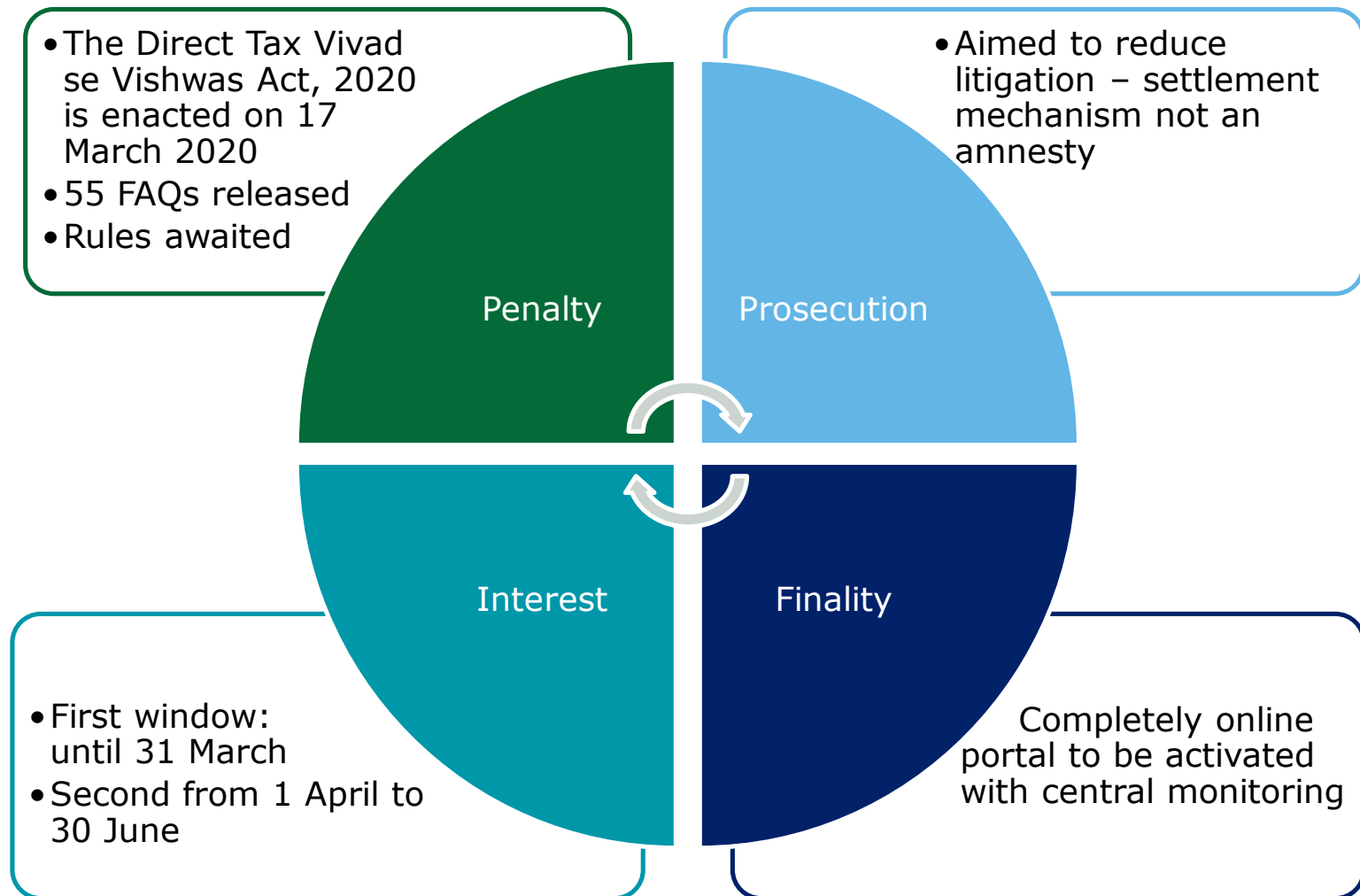
Vijay Dhingra

Agenda

- Background
- Government's perspective – speaker's view
- Overview & Procedural aspects
- Key business considerations
- Panel discussion
- Way forward
- Questions and answers

Background

Background



Government's perspective

Speaker's view

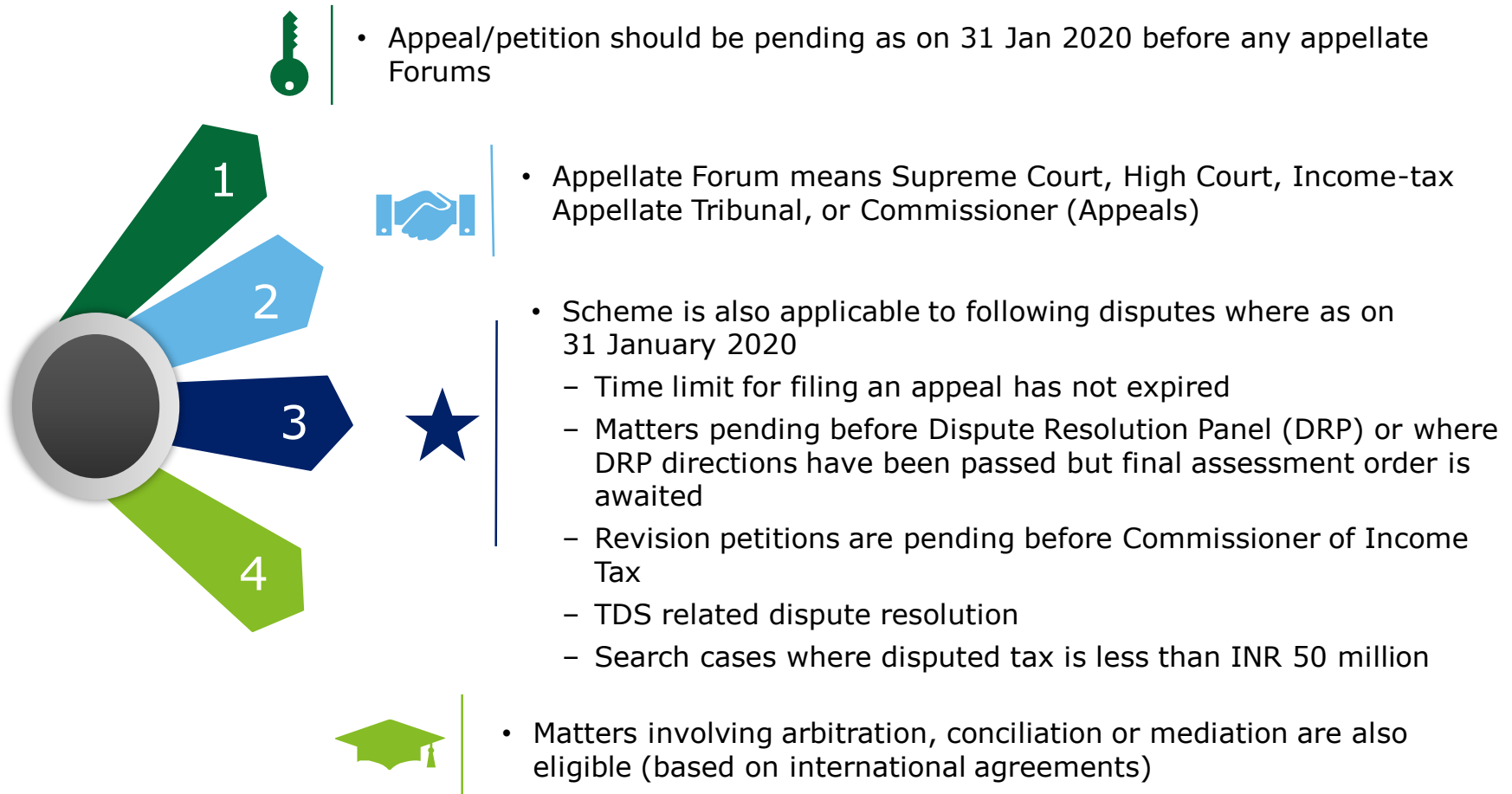
Polling question #1

Do you think the time limit of March 31st is practically feasible for you to consider the scheme

- a. Yes
- b. No – Too short a time to take a decision
- c. No - Arranging funds an issue
- d. No – Both the above reasons

Overview and procedural aspects

Eligibility



No provisions in the scheme to settle part of a pending dispute in relation to an appeal/petitions

“Amount payable” in respect of “tax arrears”

Search cases	Other than search cases	Disputes only interest, penalty or levy
Amount to be paid on or before 31 March 2020		
<ul style="list-style-type: none"> • Lower of <ul style="list-style-type: none"> – 125 percent of disputed tax; or – 100 percent of disputed tax plus interest and penalty on such disputed tax 	<ul style="list-style-type: none"> • 100 percent of the disputed tax 	<ul style="list-style-type: none"> • 25 percent of disputed interest /disputed penalty/disputed fee
Amount to be paid post 31 March 2020		
<ul style="list-style-type: none"> • Lower of <ul style="list-style-type: none"> – 135 percent of disputed tax; or – 100 percent of disputed tax plus interest and penalty on such disputed tax 	<ul style="list-style-type: none"> • Lower of <ul style="list-style-type: none"> – 110 percent of disputed tax; or – 100 percent of disputed tax plus interest and penalty on such disputed tax 	<ul style="list-style-type: none"> • 30 percent of disputed interest /disputed penalty/ disputed fee
Last date of the scheme to be notified by the Government (30 June 2020 as per FM's budget speech)		

Disputed tax, in relation to an assessment year, is essentially tax on disputed income

“Amount payable” in respect of “tax arrears” (Cont’d)

Department appeal, loss situation, MAT credit situation

- In case of Assessee’s appeal covered in its own decision before higher forum **or** in case of department’s appeal, the percentage of tax arrears payable would be **50%** of the tax arrears
- In case of a situation where the taxpayer has taxable losses, the taxpayer shall have an option to
 - Either pay the notional tax on amount determined and carry forward the losses without reducing them; or
 - **Settle by accepting the reduced carry forward of loss** (on account of the disputed amount) without making any payment
- Same mechanism would apply for **reduction in MAT credit**

Scheme not to apply to certain cases



- **Tax arrear on account of**

- Assessment made as a result of search and seizure and disputed tax amount exceeds INR 50 million
- Prosecution initiated before filing declaration
- Undisclosed foreign income/assets
- Information received as per section 90 or section 90A of the Income-tax, Act 1961



- **Order passed under conservation of foreign exchange and prevention of smuggling activities**



- **Prosecution for any offence punishable under certain acts; or initiated by the Income- tax authorities under Indian Penal Code for 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)**

Procedure for appeals filed by taxpayer



- Taxpayer to file declaration in specified form



- 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



- Designated authority within 15 days to determine the amount payable by the taxpayer



- Taxpayer to pay the amount determined within 15 days and intimate the designated authority. Along with it, taxpayer to also submit proof of withdrawal of such appeal



- Designated authority will then pass an order, which shall be conclusive as to the matters stated in the declaration

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
- **Claim of conceding tax position on settling the dispute will not hold good.** Thus, the same cannot be considered as a precedent of giving up a tax position

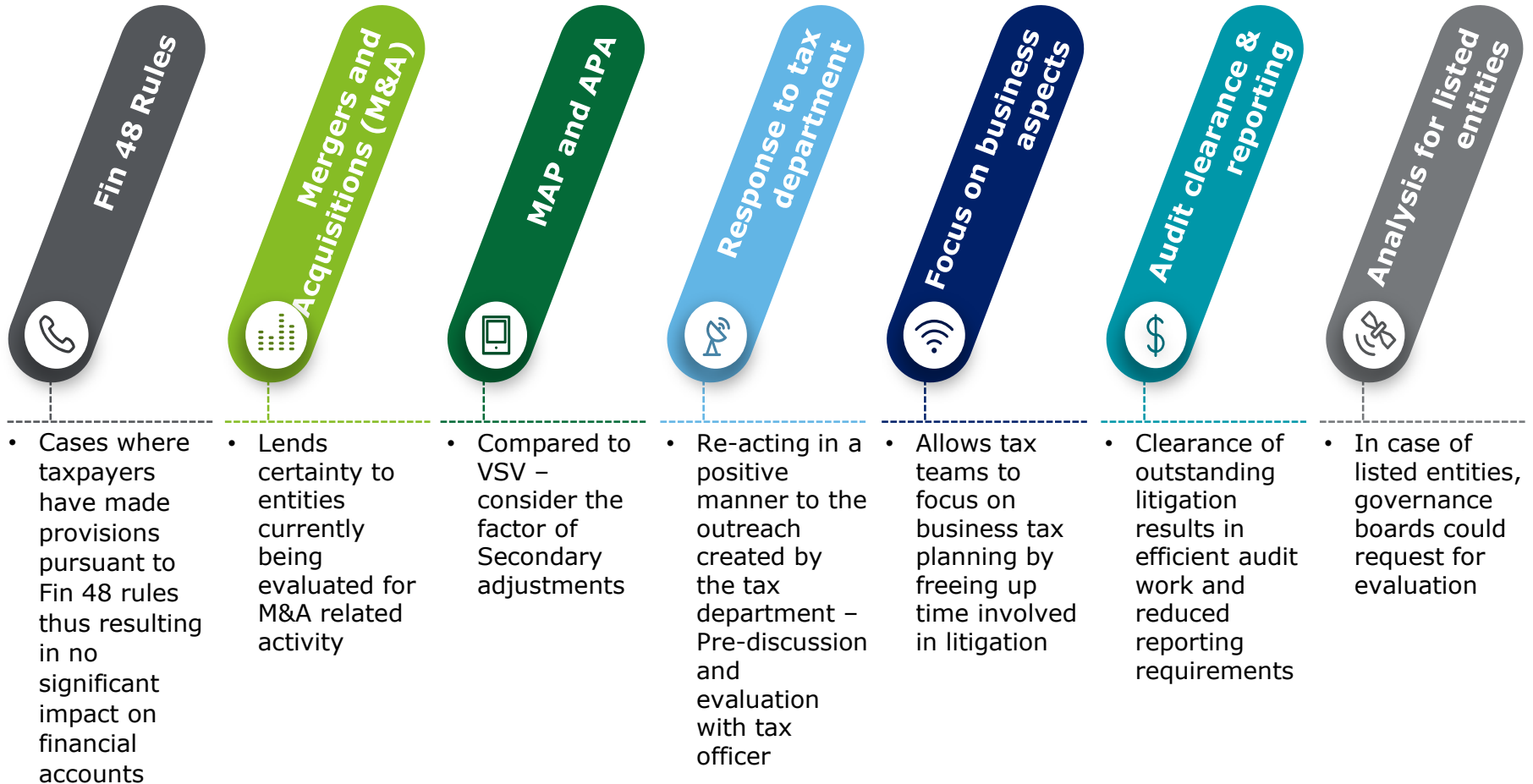
Consequences (Cont'd)

Other aspects

- Any amount paid in pursuance of a declaration shall not be refundable
 - Except where before making the declaration the appellant had paid in excess of the amount to be paid under dispute but the refund will be paid without interest
- Central Board of Direct Taxes (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 Act come into force

Key business considerations

Critical business considerations



Pros and cons

Pros

- Avoids protracted litigation
- Provides certainty from a tax and financial disclosure perspective
- Savings in litigation costs
- Waiver of interest and penalty
- Utilization of tax losses
- Settlement under scheme will not be viewed as creating a precedence
- Trust building measure between taxpayer and tax department

Cons

- Requires rapid decision making and swift analysis of complex calculations owing to the short time gap between enactment of the Act and filing of declaration and payment
- No option for partially availing the scheme i.e., no option to only settle some grounds and pursue litigation for others
- Results in immediate cash outflow and likely to cause diversion of cash resources away from budgeted expenses
- Does not provide relief from double taxation and specially cases where stakes involved are high. Taxpayers may opt for APA or MAP in such cases

Panel discussion

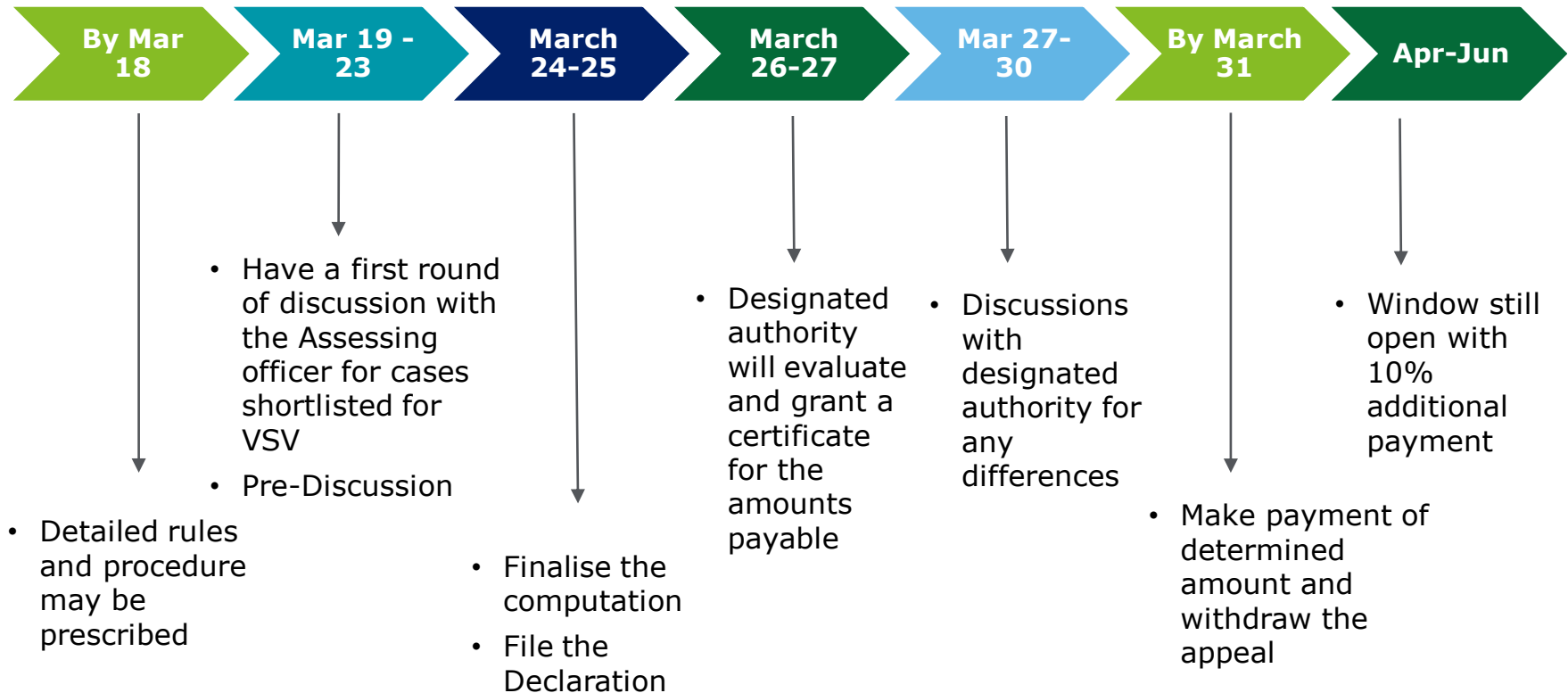
Polling question #2

Are you planning to opt for the scheme?

- a. Yes
- b. Evaluating
- c. Not sure
- d. No

Way forward

Next steps with key timelines



We represented for a few more queries that need clarifications and the second set of FAQs may also be released soon...

Q&A

Please type your questions in the chat window



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