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**The Direct Tax Vivad Se Vishwas Rules, 2020 –
Procedure and Forms**

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Background

The Direct Tax Vivad se Vishwas Act, 2020 introduced a dispute resolution scheme, which was applicable to all appeals/petitions filed by the taxpayers or the income tax department, which were pending until 31 January 2020, before any appellate forum. In essence, it offered complete waiver of interest and penalty if the taxpayer agreed to pay the disputed tax amount by 31 March 2020.

In connection with this scheme, the much awaited Rules laying out the forms and procedures for the Direct Tax Vivad se

Vishwas Act, 2020 (the VsV Act) were released by the Central Government vide notification dated 18 March 2020. These Rules are titled as "The Direct Tax Vivad se Vishwas Rules, 2020" (the VsV Rules). The Rules have laid out five forms in numerical order for declaration, undertaking, granting of certificate, intimation of payment alongwith proof of withdrawal and issuance of order. As expected, the forms must be filed online under digital signature or through electronic verification code and therefore, taxpayers may still be able to achieve resolution of their tax

disputes within the first window, which ends by 31 March 2020 per the VsV Act.

The second window starts from 1 April 2020 until a date to be specified per the VsV Act, (likely to be 30 June 2020 per the finance minister's Union Budget 2020 speech) In this window, the taxpayer may still be able to settle his disputes and get complete waiver of interest and penalty, subject to paying an additional amount as specified in the VsV Act which in most cases, will be 10 percent of the disputed tax.



Forms as per VsV Rules

The VsV Rules have prescribed five forms, which are explained below:

| Form No. | Form for | Content of the Form |
|-----------------|-----------------|---|
| Form 1 | Declaration | <p>Form 1 is bifurcated into the following parts:</p> <ul style="list-style-type: none">Part A – General information and information related to eligibilityPart B – Information related to disputePart C – Information related to tax arrearsPart D – Information related to amount payablePart E – Information related to payments against tax arrearsPart F – Net amount payable/refundable by the appellant |
| Form 2 | Undertaking | This form relates to the undertaking whereby the taxpayer waives all rights to any remedy/claim related to the matter for which the taxpayer opts to settle his disputes under the VsV Act. |



| Form No. | Form for | Content of the Form |
|-----------------|---|---|
| Form 3 | Granting of certificate | <p>The designated authority shall grant a certificate electronically to the declarant containing the particulars of the tax arrears and the amount payable in this form.</p> <p>The declarant is required to pay the amount payable as mentioned in Form 3 within the prescribed time; otherwise, the declaration under Form 1 shall be treated as null and void.</p> |
| Form 4 | Intimation of payment and proof of withdrawal | <p>The details of payment made pursuant to Form 3 shall be furnished to the designated authority in this Form.</p> <p>Further, the proof of withdrawal of appeal, objection, application, writ petition, special leave petition, arbitration, conciliation, mediation, or claim filed by the declarant (as the case may be) shall also be furnished.</p> |
| Form 5 | Issuance of order | <p>The designated authority in this Form shall issue the order. The order is a culmination of the entire process whereby the designated authority certifies that the taxpayer has paid the dues as mentioned in Form 3 and that immunity from any prosecution or penalty proceedings is granted to the taxpayer.</p> |

- Form 1 prescribes various schedules for different scenarios that may be applicable to the Assessee. These schedules are an attempt to bring more clarity on computational aspects keeping in mind the uniqueness of each case. The summary of various schedules of Form 1 is provided in Annexure 1 of this document.
- Form 1 and 2 for declaration and undertaking respectively shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income-tax Act, 1961 (the Act).
- Inadvertently, as against the time limit of 15 days per the VsV Act for the taxpayer to make payments per the certificate given by the designated authority, the time limit per the VsV Rules is 30 days as mentioned in Form 3. This apparent error has been rectified by acorrigendum dated 21 March 2020.
- Also with regard to proof of withdrawal required to be submitted in Form 4, the circular 7/2020 issued by the CBDT on 4 March 2020, clarifies in question no. 43 that, where taxpayer has made a request for withdrawal and such request is under process, proof of such request made may be enclosed.

Manner of computing disputed tax where loss, unabsorbed depreciation, or MAT credit is utilised

Besides enacting the Forms, the VsV rules lays out the manner of computing disputed tax in specific situations such as those where loss or unabsorbed depreciation or MAT credit is reduced.

- Where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation or MAT credit to be carried forward under the VsV Act, the declarant shall have an option to do the following:
 - i. Pay tax on the disputed amount without reducing the amount of loss or unabsorbed depreciation or MAT credit; or
 - ii. Carry forward the reduced amount of loss or unabsorbed depreciation or MAT credit.

For example, ABC Ltd. has a carried forward loss of INR 100 and addition proposed by the assessing officer is INR 60, thus leaving a reduced carried forward loss of INR 40. If ABC Ltd. evaluates its case under VsV scheme, it will have two options:

- i. Pay tax on disputed amount of INR 60 per the provisions of the Act and carry forward losses of INR 100; or
 - ii. Carry forward the losses of INR 40 and pay tax in the subsequent years as a consequence of carrying reduced losses.
- If the declarant chooses option (ii) then, he shall be liable to pay tax including interest in the subsequent years as a consequence of carrying forward the reduced amount of loss or MAT credit or unabsorbed depreciation provided:
 - Written down value of the block of the assets is not increased by the amount of reduction in unabsorbed depreciation.
 - The disputed amount shall be replaced by the following:

| Particulars | VsV eligible cases - Eligible search cases | VsV eligible cases - Other than eligible search cases |
|---|--|---|
| Issues covered in favour of the declarant | 62.5% | 50% |
| Issues not covered in favour of the declarant | 125% | 100% |



Another example can be a situation where ABC Ltd. has a carried forward loss of INR 100 and the assessing officer proposes an addition of INR 160. In such a scenario, ABC Ltd. has two options:

- i. It can choose to pay tax on the complete disputed income of INR 160 and carry forward loss of INR 100; or
- ii. It will have zero carried forward loss and require to pay tax on the balance disputed income of INR 60 (INR 160 less INR 100)

Therefore, the taxpayer on the basis of above two options has the option to either pay tax on the disputed income or carry forward reduced loss or avail of both the options, i.e., pay taxes partly and carry forward reduced/NIL losses.

Concluding remarks:

It will be important for taxpayers to evaluate the actual tax/cash outflow currently as well as in future if they wish to opt for the VsV scheme to enable them to make a decision. As evident, while the taxpayer has to make tax payments by 31 March; there is no specific period laid out for the receipt of any refunds that may be due to the taxpayer. Further, considering that the Form 1 (declaration) is designed to operate assessment year wise—i.e., one Form for each assessment year; tax payers would need to evaluate the implications of opting for the scheme each assessment year wise rather than an entire package of dispute resolution spanning over several assessment years. However, it may be worth highlighting that, Form 3 (certificate to be issued by the department) mentions a column of assessment year, thereby denoting that a consolidated certificate for different assessment years may be issued. This gives rise to an interesting aspect. Will a taxpayer opt to avail the VSV scheme for five years, whether a year by year position for tax payable/refund would be considered or a net position encompassing all five years would also be allowed? This is expected to be clarified by the CBDT in next circular of FAQs.

Annexure 1 – Schedules to Form 1

| Schedule | Applicability | Remarks |
|------------|--|---|
| Schedule A | Schedules applicable where declaration related to disputed tax (Applicable in case of PAN) | In this bucket, there are 11 Schedules providing combinations to select from on the basis of the following: <ul style="list-style-type: none"> dispute pending at different appellate levels, i.e., CIT(A), DRP (draft order/DRP direction), ITAT, HC, SC, Sec. 264, arbitration/conciliation/mediation Assessee appeal/department appeal |
| Schedule B | Schedules applicable where declaration relates to disputed TDS/TCS (Applicable for TAN) | In this bucket, there are nine Schedules providing combinations to select from <ul style="list-style-type: none"> dispute pending at different appellate levels, i.e., CIT(A), ITAT, HC, SC, Sec. 264, arbitration/conciliation/mediation Deductor/collector appeal/department appeal |
| Schedule C | Schedule applicable where declaration relates to disputed penalty, interest or fee only (applicable for Permanent Account Number [PAN] and Tax Deduction and Collection Account Number [TAN]) | In this bucket, there are nine Schedules providing combinations basis the following: <ul style="list-style-type: none"> dispute pending at different appellate levels, i.e., CIT(A), ITAT, HC, SC, Sec. 264, arbitration/conciliation/mediation Assessee appeal/department appeal |
| Schedule D | In case the appellant opts not to pay tax on additions having effect of reducing loss/depreciation or MAT credit carried forward, then the relevant column of the following schedule is to be filled up. | |

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