

The Direct Tax Vivad se Vishwas Act, 2020

Decoding the act and circular

Background

“The Direct Tax Vivad se Vishwas bill, 2020” was tabled on 5 February 2020, in the Lok Sabha, to provide a resolution for pending income-tax disputes. Thereafter, official amendments to the bill were proposed for accommodating the representation received from key stakeholders. However, several aspects of the scheme required clarifications, which the government provided in the form of an amended bill, passed by the Lok Sabha on 4 March, and by way of a circular issued by the Central Board of Direct Taxes (CBDT). The amended bill was passed by the Rajya Sabha on 13 March 2020. The President of India provided his assent to the bill on 17 March 2020, thus enacting the "Direct Tax Vivad se Vishwas Act, 2020" (Act or VsV scheme).

The Direct Tax Vivad Se Vishwas Rules, 2020 were enacted on 18 March 2020 laying down the procedures to operationalize the VsV scheme.

Further, the CBDT has issued a Circular No. 9 of 2020, in order to regularize the clarifications provided earlier on the bill, with limited changes.

Eligibility and amount payable according to the VsV scheme

The VsV scheme is applicable to all appeals/petitions filed by taxpayers or the income tax department, which were pending on 31 January 2020, with either the commissioner of income-tax (appeals), income-tax appellate tribunal, high court, or the Supreme Court. Further, the taxpayers will be required to pay the following amounts if they decide to settle under the VsV scheme:

Particulars	On or before 30 June 2020 [^]	After 30 June 2020 [^]
Appeals filed by the taxpayer		
Search cases	125 percent of disputed tax*	135 percent of disputed tax*
Other than search cases	100 percent of disputed tax*	110 percent of disputed tax*
Cases related only to interest, penalty, or levy	25 percent of disputed interest, penalty or fee	30 percent of disputed interest, penalty or fee
Appeals filed by the department (Indian Revenue Service), or if the department has lost an issue (at a higher appeal forum for a different year)		
Search cases	62.5 percent of disputed tax*	67.5 percent of disputed tax*
Other than search cases	50 percent of disputed tax*	55 percent of disputed tax*
Cases related only to interest, penalty, or levy	12.5 percent of disputed interest, penalty, or fee	15 percent of disputed interest, penalty, or fee

*Interest and penalty waived

[^]VsV scheme provided 31 March 2020, however this date has been extended by the promulgation of the The Taxation And Other Laws (Relaxation Of Certain Provisions) Ordinance, 2020

Critical amendments in the Act, as compared to the bill

- Eligibility has been extended to the following cases as on 31 January 2020:
 - Writ or special leave petition (SLP) filed are pending
 - Assessment order or appeal order, or order in writ petition, is passed and the time limit for filing appeal or SLP has not expired
 - Cases are pending before the Dispute Resolution Panel (DRP) or where DRP directions have been passed but final assessment order is awaited
 - Revision petitions filed are pending before the Commissioner of Income Tax
 - Commissioner (Appeals) [CIT(A)] has issued an enhancement notice, in which case, the disputed tax shall be increased by issues mentioned in the enhancement notice
 - Assessment is made pursuant to search-and-seizure proceedings, and the disputed tax amount is below INR 50 million (approximately US\$ 0.70 million)
- In case of an appeal filed by the department, or where it has lost an issue (at a higher appeal forum for a different year), the VsV scheme requires the tax payer to pay only half of the tax payable otherwise
- Where the dispute relates to reduction of MAT credit or reduction of loss/depreciation, then an option to offset disputed taxes by way of reduction in MAT Credit or carried forward losses or depreciation
- Option to settle dispute qua appeal as against qua assessment year, by redefining calculation of disputed taxes
- If the tax payable in the scheme is lower than the amount already paid in the course of litigation, the scheme also provides that the excess will be refunded (but without interest due on such refunds)
- Declaration made under the VsV scheme will not be considered as setting any precedence for the taxpayer or the tax authority, in relation to the issues covered under the declaration

Clarifications on applicability of the scheme provided in the circular

CBDT has clarified that the scheme can be availed in the following:

- For cases pending in arbitration, despite no pending appeal
- Where the appellate authority has remanded a case back to the file of the Assessing Officer (AO) with specific direction;
- Where there are more than one appeals for a particular assessment year—either of them, or all of them may be settled
- Where the draft order is passed, but time limit to file DRP is pending, or time limit to pass final order is pending, as the case may be
- By reckoning the limit of INR 50 million in search cases for each assessment year (AY) separately
- Even if there are no tax arrears (for example, loss to loss cases)
- Where prosecution has been initiated (but not taken by a civil court yet), the same can be settled by compounding the offence
- Where appeals are pending, both for original audit and re-audit (section 147), the tax payer can opt to settle either one or both the appeals

CBDT has clarified that scheme will not be applicable to the following:

- Cases pending before the AAR. However cases, where AAR has determined the amount of income and a Writ Petition is pending, can be settled;
- Cases where the appellate forum has cancelled the assessment along with a direction to frame it de-novo (carry a fresh assessment);
- To settle only the penalty appeal, when quantum appeal is also pending
- To settle only selective issues pending in an appeal
- To settle writ petitions filed against notices under section 148, where no assessment order has been passed yet
- To settle applications for waiving interest under section 234A, 234B, and 234C
- To settle disputes under wealth tax, STT, CTT, and equalisation levy

Clarifications on computation of disputed taxes provided in the circular

- Mechanism to calculate disputed tax in the following instances:
 - Where the department's challenge is quashing the order due to lack of jurisdiction, amount payable under the scheme shall be 50 percent of the disputed tax, assuming the assessment order was to be restored
 - In cases where rectification is pending with the AO, the disputed tax will be calculated after putting to effect the rectification order passed, if any
 - Where multiple issues are involved, out of which certain issues are set-aside, VsV can be availed if the declaration covers all issues
- Interest under section 220 will also be waived
- In case there are multiple issues in an assessment order, and only selective issues are pending in appeal, interest and penalty will not be waived for all issues but only for those in such appeal;
- In case there are multiple issues in an appeal and one or more of the issues are settled in the tax payer's favour by the Supreme Court, then in computation of disputed tax, the tax on such issues will be NIL
- In case there is a substantive addition, as well as protective addition, and if substantive addition is covered under VsV, then the AO shall pass a rectification order deleting protective addition
- Patent errors in the designated authority's certificate, computing the demand, can be rectified.

Clarifications on payment of disputed tax provided in the circular

- Payment of disputed taxes will have to be made by 30 June 2020, to avail the lower amounts provided in the table above (payments after 30 June 2020 will attract 10 percent higher payment);
- Credit of all taxes paid (related to the AY being settled) will be available against the payment to be made under VsV
- When appeals (pertaining to section 201) proceedings are settled by the deductor, the credit will be allowed to the deductee. However, such credit will be allowed as of the date of settlement of dispute
- It is clarified that where section 201 proceedings are settled, a consequential effect will be provided in appeals where a disallowance under section 40(a)(i)/(ia) is made

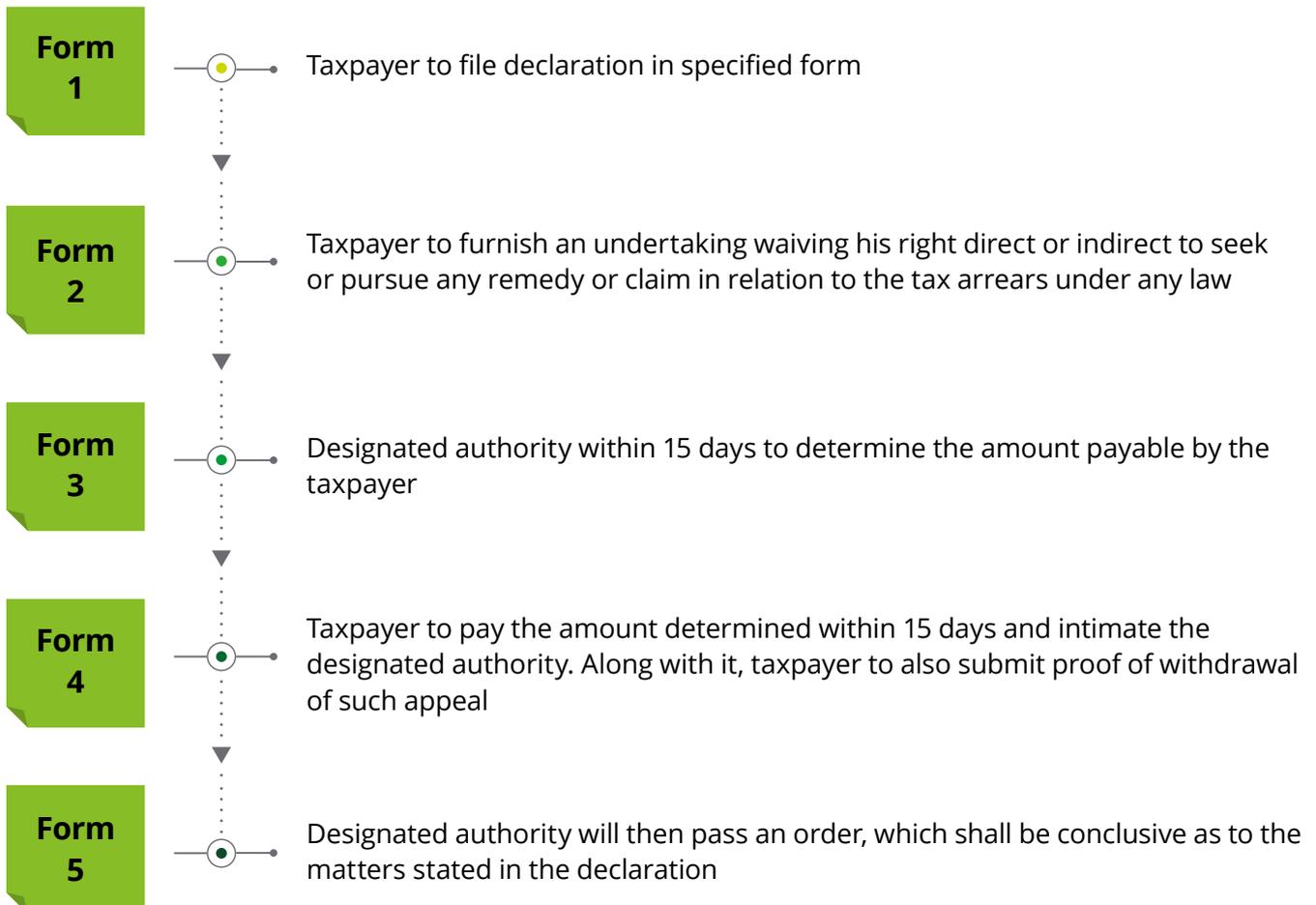
Clarifications on secondary adjustment provided in the circular

- Secondary adjustment provisions applicable for transfer pricing cases are independent, and will continue to apply even if the appeal is to be settled under VsV. However, it is important to note that secondary adjustment provisions will be applicable only from AY2017-18 onwards. Practically, none of these pending in appeal may be eligible in the scheme.

Further clarifications is required on the following aspects

- Whether miscellaneous applications, filed by the department before the ITAT, can be considered as an appeal for the purpose of the VsV scheme?
- Whether an appeal filed by the taxpayer, along with an application for condonation of delay, be considered as an appeal for the purpose of the VsV scheme?
- Whether interest waiver related to pending AAR can still be considered in the scheme?

Procedure prescribed under rules of the VsV scheme



Concluding comments

The VsV scheme and the circular have cleared several qualms of taxpayers, enabling them to take a practical call for settling disputes and thus, seek finality of outcomes in those cases. Taxpayers can avail significant leverage on the waiver of interest and penalty being offered under the scheme. Considering the tax appellate process is a lengthy one, and there is no immunity from levy of interest even in cases where delay in adjudication is not attributable to the taxpayer alone, a particular appeal may take between 12 and 15 years to resolve. With that, the interest liability could very well equal, or in some cases, exceed the disputed tax amount. Therefore, the scheme not only provides an opportunity for taxpayers to evaluate all open litigations, but also an escape route to minimise final pay-out. Moreover, as the settlement under the scheme does not set a precedence for either party, taxpayers keep a side of bargain with themselves for cases, where they would like to pursue such cases on merit with their right to litigate.

It is said that growth is always propelled in circumstances of trust and harmony, and therefore it is imperative to move from “vivad” (dispute) to “vishwas” (trust), by ensuring that this window of settling disputes is considered in a serious manner by all taxpayers.



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