

NDA Update – Brief Note on Vivad se Vishwas Scheme 2020 (as amended)

The Direct Tax Vivad se Vishwas Bill, 2020 was introduced on 5th February 2020 for dispute resolution related to direct taxes which may be pending with Commissioner (Appeals) or Income Tax Appellate Tribunal or High Court or Supreme Court. Since the Bill was having certain issues / anomalies (some of the issues were covered in our earlier update on the subject), amendments were moved to the provision of the Bill. The important amendments have been highlighted. Now the summarised scheme after amendment is as under:

Who can avail benefit-

- A person in whose case an appeal / writ / Special Leave Petition (SLP) has been filed by him or Income Tax Department or both which are pending as on January 31, 2020 (hereinafter referred to as specified date).
- *A person in whose case an order has been passed by Assessing Officer (AO) or by Commissioner (Appeals) or by Income Tax Appellate Tribunal (ITAT) or by High Court before the specified date and the time for filing appeal / writ / SLP has not yet been expired as on that date.*
- *A person who has filed his objections before the Dispute Resolution Panel (DRP) and the DRP has not issued any direction on or before the specified date.*
- *A person in whose case the DRP has issued directions but the AO has not passed any order on or before the specified date,*
- *Search Cases where the amount of disputed demand is less than Rs 5 crores in an assessment year.*
- Appeals filed with Commissioner (Appeals), Income Tax Appellate Tribunal, High Court or Supreme Court irrespective of whether tax demand in such cases is pending or has been paid.
- Appeals may be against disputed tax, interest or penalty or may be against interest, penalty or fees if there is no disputed tax.
- Appeals may also be against the tax determined on default in respect of payment in respect of TDS or TCS.

Disputed Tax

In the original bill the amount of disputed tax was determinable on the basis of formula which has now been simplified and the amount of tax payable in terms of the order of the respective authorities / writ / SLP / direction by DRP shall be deemed to be disputed tax.

Benefits proposed-

- In case of appeals by tax payers against disputed tax-

Payment date	Payment comprises of
On or before 31.03.2020	Only disputed tax (100 % waiver of interest & penalty)
After 31.03.2020 but before the last date to be notified	Disputed tax + 10% of disputed tax amount. However, if the 10% of disputed tax amount exceeds amount of interest and penalty, the excess shall be ignored.

- In case of Search-*

<i>Payment date</i>	<i>Payment comprises of</i>
<i>On or before 31.03.2020</i>	<i>Disputed tax + 25% of the disputed tax However, if the 25% of disputed tax amount exceeds amount of interest and penalty, the excess shall be ignored.</i>
<i>After 31.03.2020 but before the last date to be notified</i>	<i>Disputed tax + 35% of the disputed tax However, if the 35% of disputed tax amount exceeds amount of interest and penalty, the excess shall be ignored.</i>

- In case of appeals by tax payers against disputed interest / penalty / fees-

Payment date	Payment comprises of
On or before 31.03.2020	25% of disputed interest or penalty or fees
After 31.03.2020 but before the last date to be notified	30% of disputed interest or penalty or fees

- If the pending appeal of a person is already decided in his favour by the appellate forum or if the department has filed appeal, the amount payable shall be 50% of the aforesaid amount in the tables*

Way forward to avail this scheme

- Filing of declaration: The scheme can be availed by filing a declaration under Sec 4 with the designated authority.
- Withdrawal of appeal / writ: Where the declarant has filed any appeal before the appellate forum or any writ petition before the High Court or the Supreme Court, he shall withdraw such appeal or writ petition *after issuance of certificate by the designated authority* and furnish proof of such withdrawal along with *intimation of payment to the designated authority. Thus the requirement of withdrawal of appeal etc at the time of declaration has been modified.*
- Issuance of Order by the authority: Within 15 days of filing of declaration under Sec 4, the designated authority shall issue an order and determine the amount payable by the declarant under this Act. He shall also issue a certificate to the declarant providing the tax arrear and the amount payable in the prescribed form. The order passed shall be conclusive and cannot be reopened under Income Tax law or any other laws.
- Payment: The declarant shall be required to pay the amount so determined within 15 days of the date of receipt of the certificate. He shall also intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order stating that the declarant has paid the amount.
- It has now been clarified that if the amount already paid before filing of the declaration exceeds the amount payable under the scheme, the person shall be entitled to refund of excess amount but without any interest.*

Who can not avail benefit of the scheme-

Benefit of scheme cannot be availed in certain cases like:

- Litigations arising out of undisclosed income arising from sources outside India or undisclosed asset outside India, or
- If assessment was made on the basis of search initiated if the amount of disputed tax exceeds exceed Rs 5 crores, or
- Prosecution initiated before filing of declaration by the declarant, or
- If the assessment or reassessment was made based on information received under an agreement referred under Section 90 or Section 90A of the Income Tax Act, 1961, if it relates to any tax arrear.
- Appeal filed before the Commissioner (Appeals) in respect of which notice of enhancement under section 251 of the Income-tax Act has been issued on or before the specified date, or
- To any person in respect of whom an order of detention has been made under the provisions of the COFEPOSA Act, 1974 on or before the filing of declaration.