



Grant Thornton

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UNION BUDGET 2020

Vivad se Vishwas Scheme

Introduction



Measure to reduce pending litigation

- Encouraged by the success of the Indirect Tax Sabka Vishwas (Legacy Dispute Resolution) Scheme, Budget 2020 had proposed a new Direct Tax amnesty scheme, 'Vivad Se Vishwas', with a view to reduce litigation.
- Accordingly, the government has now tabled **The Direct Tax Vivad Se Vishwas Bill, 2020** in Parliament.

Fast facts



Number of direct tax cases pending in various appellate forums: **483,000**



Amount locked up in direct tax disputes as on 30 November 2019: **INR 9.32 lakh crore**

Coverage of the Scheme

- Taxpayer can opt for the Scheme in case there is an **appeal pending** as on 31 January 2020, before following appellate forums:
 - Supreme Court (SC)
 - High Court (HC)
 - Income Tax Appellate Tribunal (ITAT) or
 - Commissioner (Appeals) (CIT(A)).
- The pending appeal can be in respect of:
 - disputed tax, interest or penalty
 - disputed fee
 - tax determined on defaults in respect of tax deducted at source or tax collected at source.



Exclusions from the Scheme (1/2)

Cases where the Scheme is not applicable

It is proposed that the Scheme shall not be available in respect of tax arrears relating to:

- Assessment Year (AY) in respect of which prosecution has been instituted on or before the date of filing of declaration under this Scheme
- Search and seizure cases
- Any undisclosed income from a source located outside India or undisclosed asset located outside India
- An assessment or reassessment made on the basis of information received under any Tax Treaty
- Appeal before the CIT(A) in respect of which notice of enhancement has been issued by the CIT(A) on or before 31 January 2020



Exclusions from the Scheme (2/2)

Persons who cannot avail the Scheme

It is proposed that the Scheme cannot be availed by the following **persons**:

- Person in respect of whom an order of detention has been made under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration [subject to certain conditions].
- Person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration.
- Person in respect of whom prosecution for any offence punishable under the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, **the Prohibition of Benami Property Transactions Act, 1988** or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts.



Amount payable under the Scheme



Nature of tax arrear	Amount payable by 31 March 2020	Amount payable from 1 April 2020 but before the last date of the Scheme
Tax arrears, is the aggregate of: <ul style="list-style-type: none"> • amount of disputed tax • interest chargeable or charged on such disputed tax • penalty leviable or levied on such disputed tax 	100% of disputed tax	100% of disputed tax + 10%* of disputed tax
Tax arrear relates to disputed interest or disputed penalty or disputed fee	25% of disputed amount	30% of disputed amount

* Where 10% exceeds interest and penalty chargeable on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.

Computation of disputed tax



The disputed tax will be calculated by a formula $(A-B)+(C-D)$ where,

Item	Particulars
A	Amount of tax on the total income assessed under normal provisions of the Income-Tax Act, 1961 (Act)
B	Amount of tax that would have been chargeable had the total income assessed as per the normal provisions been reduced by the amount of income in respect of which appeal has been filed by the taxpayer
C	Amount of tax on total income assessed under Minimum Alternate Tax (MAT) or Alternate Minimum Tax (AMT) provisions
D	Amount of tax that would have been chargeable had the total income assessed as per the MAT or AMT been reduced by the amount of income in respect of which appeal has been filed by the taxpayer

Aspects to be kept in mind while computing disputed tax

Item (C-D)

In a case where the MAT or AMT is not applicable, the **item (C – D)** in the formula should be ignored.

Item D

Where the amount of income in respect of which appeal has been filed by the taxpayer is considered both under the normal provisions of the Act and under MAT/AMT provisions, such amount shall not be reduced from total income assessed while determining the amount under **item D**.

Effect of reducing loss

In case where the amount of income, in respect of which appeal has been filed by the taxpayer, has the effect of reducing the loss declared in the return or converting that loss into income, the amount of disputed tax shall be determined using modified formula.

In such cases, **item (A - B)** shall be the amount of tax that would have been chargeable on the income in respect of which appeal has been filed by the taxpayer had such income been the total income.

Computation of disputed penalty and disputed interest



Disputed penalty

Penalty determined in any case under the Act where:

- such penalty is not levied or leviable in respect of disputed income or disputed tax;
- an appeal has been filed in respect of the such penalty.

Disputed interest

Interest determined in any case under the Act where:

- such interest is either not charged or chargeable on disputed tax;
- an appeal has been filed in respect of such interest.

Filing of declaration (1/2)



Declaration to be filed before the Designated Authority

- The taxpayer is required to file a declaration with the designated authority. Designated authority has been defined to mean an officer not below the rank of Commissioner of Income-tax notified by the Principal Chief Commissioner.
- The declaration shall be presumed to have never been made in following situations:
 - any material particular furnished in the declaration is found to be false at any stage;
 - the declarant violates any of the conditions referred to in the Scheme;
 - the declarant acts in any manner which is not in accordance with the undertaking given by him.

In such cases, all proceedings and claims that were withdrawn shall be deemed to have been revived.

**The format for
declaration to be
prescribed in due
course**

Filing of declaration (2/2)



Withdrawal of appeals etc.

- The taxpayer shall withdraw its appeal filed in the appellate forum or any writ petition before the HC or SC and furnish proof of such withdrawal along with the declaration.
- The taxpayer shall withdraw its claim in proceedings for arbitration, conciliation or mediation, prior to making the declaration and furnish proof thereof along with the declaration.

Undertaking for waiver of rights by the taxpayer

- The taxpayer shall furnish an undertaking, waiving his rights, whether direct or indirect, to pursue any remedy in relation to the tax arrear which may otherwise be available to him under any law or agreement.
- The manner of furnishing the undertaking shall be prescribed in due course.

Time and manner of payment



Determination of amount payable

The designated authority shall, within 15 days from the date of receipt of the declaration determine the amount payable and grant a certificate to the taxpayer containing particulars of the tax arrears and the amount payable.

Payment of amount

- The taxpayer shall pay the amount within 15 days of the date of receipt of the certificate and intimate the details of such payment to the designated authority.
- The authority shall pass an order stating that the taxpayer has paid the amount.

**Any amount paid
under the Scheme
shall not be
refundable**

Other aspects



Order of the designated authority to be conclusive

- Every order determining the amount payable under this Scheme, would be conclusive as to the matters stated therein.
- Further, the Scheme does **not** confer any benefit, concession or immunity to the taxpayer, in any proceedings other than those in relation to which the declaration has been made.

Matters not covered by such order can be reopened in any other proceedings.

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