

THE POWER OF BEING UNDERSTOOD

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**Newsflash: Significant Highlights of The Direct Tax
Vivad Se Vishwas Bill, 2020**

1.0 BACKGROUND

In order to reduce litigation in indirect taxes, the government had in 2019 brought in the “Sabka Vishwas (Legacy Dispute Resolution) Scheme”, which received a good response. This scheme for settlement of indirect tax litigation had resulted in settling over 1,89,000 cases. The Finance Minister of India, Smt. Nirmala Sitharaman in her Budget Speech on 1 February 2020 proposed to introduce a new scheme to reduce litigation in direct tax matters which is expected to result in settling appeals pending at various appellate levels. Pursuant to the Budget Speech, a bill was introduced in the Parliament on 5 February 2020 named “**The Direct Tax Vivad se Vishwas Bill, 2020** (“the **Scheme**” or “the **Bill**”)” for dispute resolution related to direct taxes.

Under the proposed bill, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays the required amount by 31st March 2020. Those who avail this scheme after 31st March 2020 will have to pay some additional amount. The significant highlights of the scheme are discussed as under:

2.0 FEATURES OF THE SCHEME

2.1 WHO IS ELIGIBLE TO APPLY?

Any person who has tax arrears due to disputed tax, interest, penalty or fee and has filed appeal before the appellate forum (Commissioner (Appeals) (‘CIT(A)’) or Income Tax Appellate Tribunal (‘ITAT’) or High Court (‘HC’) or Supreme Court (‘SC’)), where such appeal is pending on **31 January 2020** can apply under this Scheme by way of filing a declaration. The declaration shall be filed by the declarant before the authority in the form and manner which would be prescribed.

2.2 WHEN TO APPLY?

The time limit for filing an application under the Scheme with the authority is yet to be prescribed by the Central Government.¹

2.3 HOW MUCH AMOUNT WOULD BE PAYABLE UNDER THE SCHEME?

The amount payable by the declarant under this Scheme shall be as under:

Sr. No.	Nature of tax arrear	Amount payable on or before the 31 March, 2020.	Amount payable on or after the 1 April, 2020 but on or before the last date (to be prescribed).
(a)	Tax arrear comprises of disputed tax, interest on such disputed tax and penalty on such disputed tax.	Amount of the disputed tax.	The disputed tax and additional 10% of disputed tax. (Subject to maximum amount of interest and penalty involved)
(b)	Tax arrear comprises of disputed interest or disputed penalty or disputed fee.	25% of disputed interest or disputed penalty or disputed fee.	30% of disputed interest or disputed penalty or disputed fee.

¹Though the Scheme introduced in the parliament is yet to notify the due date for availing the same, the Finance Minister Nirmala Sitharaman in her budget speech said that the scheme would remain open till June 30, 2020. The Bill has defined “Last Date” means such date as may be notified by the Central Government in Official Gazette.

2.4 MEANING OF DISPUTED TAX

2.4.1 Disputed tax would mean the following:

- I. Tax determined under the Income-tax Act, 1961 in accordance with the formula
 $(A - B) + (C - D)$

where,

A = an amount of tax on the total income assessed as per the provisions of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') other than the provisions contained in section 115JB or section 115JC of the Act (hereinafter called general provisions);

B = an amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which appeal has been filed by the appellant;

C = an amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961;

D = an amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 been reduced by the amount of income in respect of which appeal has been filed by the appellant.

The amount of income in respect of which appeal has been filed by the appellant is considered under the provisions contained in section 115JB or section 115JC of the Act and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D. Further, in a case where the provisions contained in section 115JB or section 115JC of the Act are not applicable, the item (C - D) in the formula shall be ignored.

- II. Tax determined under the section 200A or section 201 or subsection (6A) of section 206C or section 206CB of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant.

2.4.2 Meaning of Disputed Tax where the assessment has an effect of reducing the losses

It is pertinent to note that in case the assessment has the effect of reducing the losses or converting the losses into income, the amount of disputed tax shall be the tax on the addition made by the assessing officer assuming that the addition made to the income is the total income of such person. Thus, tax on the amount of addition made which is in appeal, may be regarded as disputed tax and hence if opted for the scheme disputed tax shall be determined

2.5 Impact of Availing the Scheme option on Pending Proceedings, Arbitrations etc.

- Once the declaration is filed by the declarant, any appeal pending before the CIT(A) or ITAT, shall be deemed to have been withdrawn from the date on which certificate is issued by the designated authority specifying the amount payable by the declarant. Moreover, where the declarant himself has filed any appeal before the ITAT / CIT (A), HC, SC, he shall withdraw

such appeal or petition with the leave of the Court wherever required and furnish proof of such withdrawal along with the declaration.

- Where the declarant has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, he shall withdraw the claim and furnish proof along with the declaration.
- The declarant shall furnish an undertaking waiving his right, to seek any remedy or any claim in relation to the tax arrears which may otherwise be available to him under any law, in equity, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise and the undertaking shall be made in such form and manner as may be prescribed.
- Further, no appellate forum or arbitrator, conciliator or mediator shall proceed to decide neither any issue relating to the tax arrears mentioned in the declaration filed by the declarant nor any proceeding would be instituted in respect of an offence or impose any penalty or charge any interest under the Act in respect of tax arrears covered under the Scheme. However, no benefit, concession or immunity shall be provided to the declarant in any proceedings other than those which are covered under this scheme.

Note: The proof of such withdrawal as discussed hereinabove has to be furnished along with the application under the scheme in the prescribed form and manner (section 4 of the Bill).

2.6 Validity of the Scheme

The declaration shall be deemed to never have been made in the following cases:

- any material particular furnished in the declaration is found to be false;
- the declarant violates any of the conditions of the Scheme;
- the declarant acts in any manner which is not in accordance with the undertaking given by him.

and in such cases, all the proceedings and claims which were withdrawn and all the consequences under the Act against the declarant shall be deemed to have been revived.

2.7 Time and manner of payment

- The authority shall, within a period of 15 days from the date of receipt of the declaration, determine the amount payable by the declarant and grant a certificate to the declarant containing particulars of the tax arrears and the amount payable.
- The declarant shall pay the amount within 15 days of the date of receipt of the certificate and intimate the details of such payment to the authority and thereupon the authority shall pass an order stating that the declarant has paid the amount.

- Every order passed shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India .

2.8 The Scheme will not apply in certain cases

The provisions of the Scheme shall not apply—

A. In respect of tax arrear,—

- Where assessment has been made for search cases under section 153A or section 153C of the Income-tax Act;
- Where prosecution has been instituted on or before the date of filing of declaration under the Scheme;
- Where any income is undisclosed from a source located outside India or there is undisclosed asset located outside India;
- Where any assessment or reassessment is made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act;
- Where an appeal is made before the CIT (A) and in respect of which notice of enhancement under section 251 of the Act has been issued on or before 31 January 2020;

B. To any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration. However, some person as specified in the Scheme are not covered, specified details of which are given in the Scheme;

C. To any person in respect of whom prosecution for any offence punishable under the provisions of 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;

D. To any 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.

3.0 OTHER ASPECTS:

- **Power of Board to issue directions, etc.**

The CBDT may, from time to time, issue such directions or orders to the income-tax authorities, as it may deem fit. However, no direction or order can be issued so as to require any authority to dispose of a particular case in a particular manner. Further, the CBDT may issue from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in any work relating to the Scheme, including collection of revenue and issue such order, if CBDT is of the opinion that it is necessary in the public interest to do so.

- **Power to remove difficulties**

If any difficulty arises in giving effect to the provisions of the Scheme, the Central Government may, by order, not inconsistent with the provisions of the Scheme, remove such difficulty. However, no such order can be issued after the expiry of a period of two years from the date on which the provisions of the Scheme come into force. Further, every such order shall, as soon as it is passed, shall be laid before each House of Parliament.

- **Power to make rules**

The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of the Scheme on matters. Every rule made by the Central Government under the Scheme shall be laid, before each House of Parliament. Further,

4.0 WAY FORWARD

Taxpayers in whose cases appeals are pending at any level as mentioned above need to evaluate all pending litigation and accordingly decide on the litigation for which they can opt for resolution under the scheme. Further, amount paid under such scheme would not be refundable under any circumstances. Thus, the decision to opt for the scheme should be made after thorough evaluation.

However, there may be situations where the assessee would have filed objections before the Dispute Resolution Panel or opted for revision petition u/s. 264 of the Act. In such cases, clarification from the Government would be required whether the said situations would be covered within the ambit of the Scheme.

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This newsflash is general in nature. In this newsflash, we have summarized the highlights of the "The Direct Tax Vivad se Vishwas Bill, 2020", as proposed to be brought in by the government in order to reduce litigation in direct taxes. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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