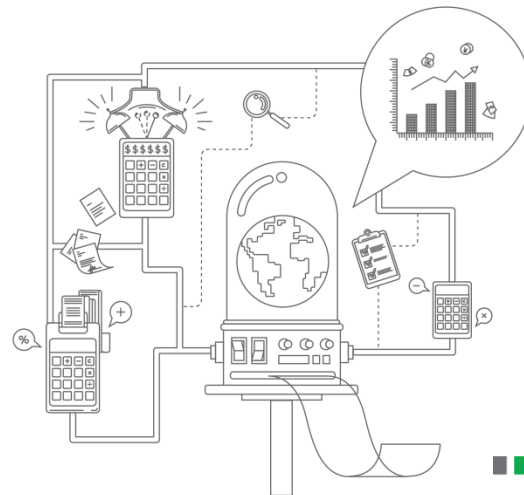


# The Direct Tax Vivad Se Vishwas ('VSV') Scheme

*Reducing Direct Tax Litigation Liability & Exposure*



## Key Highlights



# Background – VSV Scheme

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- The Direct Tax Vivad Se Vishwas Act, 2020 (VSV Scheme) provide for resolutions of disputed tax and for matters connected therewith or incidental thereto. The Scheme and the 55 FAQs (reissued) lay down the coverage, relief and mechanism.
- The Scheme provides for resolution of disputes wherein an appellant would be required to pay only the amount of the disputed taxes and will get complete waiver of interest & penalty and immunity from proceedings for prosecution for an offence provided he pays the required amount by 30 June 2020 (extended from 31 March 2020 considering the Covid19 crisis). Those who avail this scheme after 30 June 2020 will have to pay some additional amount. **The last date of scheme is yet not notified.**
- India has a huge tax litigation due to inherent complexity, high pitched assessments, long time for litigation resolution and absence of effective resolution mechanism in case of disputes. As at 30 November 2019, 4.83 lakh direct tax disputes were pending at various courts and appellate forums like CIT(A), ITAT, High Court and Supreme Court involving a whopping Rs. 9.32 lakh crores (US\$ 130 billion) in tax arrears.

# Background – VSV Scheme

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- The Government had launched the Sabka Vishwas scheme last year, targeted at indirect taxes (mainly service tax and excise dispute resolution), The Scheme was a phenomenal success whereby it received around 189,000 applications (Target was 185,000) and collected over Rs. 38,000 crores in taxes (Target was Rs. 35,000 crores).
- In the past the government has launched certain tax amnesty schemes for disclosure of income and wealth which have received poor to moderate responses. The primary reasons have been high tax rates and unrealistic conditions.
- It is clarified in the Act that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.
- It has also been clarified that once the option for settlement under the scheme is availed, the appeal filed / pending in respect of tax arrears shall be withdrawn and **no matter covered under the declaration shall be reopened in any other proceeding** under the Income-tax Act or under any other law for the time being in force or under any DTAA agreement.

# Scheme Insights

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## ✓ Taxes Covered:

The Direct Tax Vivad Se Vishwas Act, 2020 is enacted to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. It covers:

- Income-tax Act, 1961

It does not cover:

- Wealth-tax Act, 1957
- Gift-tax Act, 1958
- Equalization levy under the Finance Act, 2016

## ✓ Relief

The Scheme provides for resolution of disputes wherein an appellant would be required to pay only the amount of the disputed taxes and will get complete waiver of interest & penalty and immunity from proceedings for prosecution for an offence provided he pays the required amount by 30 June 2020 (extended from 31 March 2020 considering the Covid19 crisis). Those who avail this scheme after 30 June 2020 will have to pay some additional amount. **The last date of scheme is yet not notified.**

# Scheme Insights

Who can apply? (Specified date – 31 January 2020)	Disputed tax* (tax including surcharge and cess) -
a) Person whose appeal is pending before any appellate forum [CIT(A), ITAT, HC or SC] as on specified date	Tax payable in case appeal is decided against the appellant
b) Person who has received order and the time limit for appeal has not expired as on specified date	Tax payable as per OGE to said order (in case of set-aside matters, tax to be calculated as if the additions will be repeated by AO – FAQ 7)
c) Person who has filed objections before DRP and DRP has not issued any directions as on specified date	Tax payable if DRP confirms the additions
d) Person in whose case DRP has issued directions but final order is pending as on specified date	Tax payable as per final order
e) Person who has filed application for revision under section 264 which is pending as on specified date	Tax payable if application not accepted

\* Provided where CIT(A) has issued enhancement notice, disputed tax to be determined including tax so enhanced

\* Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D of the Income-tax Act or any loss or depreciation computed thereunder, **the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.**

# Scheme Insights

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## Scheme is not applicable in following cases –

- Assessment made on the basis of search initiated under section 132 or section 132A of the Income-tax Act, if the amount of disputed tax exceeds Rs. 5 crores;
- Relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;
- Relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;
- Relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrears
- Cases where person is notified under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, 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 Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

# Scheme Insights

## Amount payable under the scheme -

Nature of tax arrears	Amount payable before 30 June 2020 (date extended from 31 March 2020)	Amount payable after 30 June 2020 and before the last date
Where tax arrears is aggregate of disputed tax, interest and penalty	Amount of disputed tax	110% of disputed tax  (Provided where 10% exceeds interest and penalty, excess to be ignored)
Where tax arrears is tax, interest, penalty determined in any assessment based on search	125% of disputed tax  (Provided where 25% exceeds interest and penalty, excess to be ignored)	135% of disputed tax  (Provided where 35% exceeds interest and penalty, excess to be ignored)
Where tax arrears relates to disputed interest or disputed penalty or disputed fees	25% of disputed interest / penalty / fees	35% of disputed interest / penalty / fees
	<b>50% of above amounts in case of – (1) department appeal or (2) favourable higher court order available in appellant's own case which is not subsequently reversed in case of appeal before CIT(A), DRP and ITAT</b>	

# Critical Aspects – About the Scheme

- **Covers all Income-tax disputes for all assesseees for any AY** - The Scheme covers all disputes under the Income-tax Act, 1961 for **all assesseees (any person whether resident / non-resident) for any assessment year** which includes –
  - ✓ Income-tax (Normal tax provisions / MAT provisions) (incl. transfer pricing)
  - ✓ Dividend Distribution Tax – Section 115-O
  - ✓ Buy-back Tax – Section 115QA
  - ✓ Fringe Benefit Tax
  - ✓ TDS – Section 201proceedings
  - ✓ Interest – Section 234B, Section 201, Section 220(2), etc.
  - ✓ Penalty – Section 271(1)(c), section 270A, section 271C, etc.
  - ✓ Fees – Section 234E, Section 234F

Disputes under other Acts like Wealth tax, STT, CTT, equalization levy are not covered.

- **Application under the Scheme to be on wholesome or piecemeal basis** – The declarant does not have an option to opt for the scheme only with regards specific issues. **The scheme will be applied to all grounds of a particular appeal.**
- **What if ground of rectification is also taken as ground for appeal** – In many cases, even grounds of rectification like short grant of TDS, non-grant of advance tax credit, etc. is taken as ground of appeal by the declarant. In such cases, the declarant may even lose on such rectification issues if opted for scheme. **However, FAQ 25 states that disputed tax shall be considered after giving effect to rectification order passed, if any. As such, it may be imperative to get the rectification order passed before opting for the scheme.**



# Critical Aspects – About the Scheme

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- **Appeal in case where matter has been set-aside / remanded by the lower authority** – In such case, even if matter has been remanded with positive judgement / positive remarks, the amount of disputed tax has to be considered as if the said set-aside matter has been decided against the appellant. Also, the appellant shall also be required to settle other issues which have not been set-aside and for which appeal is pending or time to file appeal has not expired.
- **Cases where declaration is under arbitration, conciliation or mediation and no appeal is pending** - As per FAQ-1 & FAQ-2, even such cases are allowed under the scheme even though such appellant is not covered within the definition of appellant under the VSV Act.
- **If assessee has filed writ against notice for reassessment and no order has been passed under section 148** – Not eligible for VSV scheme as no determination of income for calculation of disputed tax.
- **In case of block assessments under search, limit of Rs. 5 Crores to be checked AY-wise** - Cases of search where disputed tax exceeds Rs. 5 Crores are not eligible under the scheme, however, if block assessments are initiated for 7 years, out of which 4 years have disputed tax less than Rs. 5 Crores and 3 years have more than Rs. 5 Crores, then appellant can avail scheme for those 4 years.
- **If a particular appeal covers both qualifying tax arrears and non-qualifying tax arrears (assessment in respect of undisclosed foreign income)** – Not eligible for VSV scheme.

# Critical Aspects – About the Scheme

- **Enhancement notice has been received from CIT(A) where appeal is pending before CIT(A)** – Disputed tax to also include amount covered by the enhancement notice.
- **Important aspects in connection with appeals relating to TDS**

If	Then	Remarks
Assessee (Deductor) settles TDS appeal under VSV (S.201)	Deductee to get credit for TDS as on date of settlement of dispute	In case of group companies it may be prudent for deductee company to claim TDS credit if the deductor settles under VSV
Assessee (Deductor) settles TDS appeal	He will get consequential relief under section 40(a)(i)/(ia)	To claim the same in the year in which tax was required to be deducted
Assessee under 2 appeals for section 201 and section 40(a) on the same issue	If assessee settles TDS appeal; Disputed tax with regards disallowance under section 40(a) to be nil	The same to be kept in mind and disputed tax to be filled as nil in the declaration
If favourable order u/s 201 available	Disputed tax for disallowance u/s 40(a) for that issue to be considered nil	
Assessee settles appeal on income which was not subjected to TDS by payer	No TDS to be paid under S. 201 order by payer, interest u/s 201(1A) liable to be paid. Can claim VSV scheme for settlement of interest if eligible	To check if for any S. 201 order, the deductee has settled appeal for assessment of that income

# Critical Aspects – About the Scheme

- **Notice for prosecution has been issued** – Assessee eligible for Scheme ; **Prosecution has been instituted** – Assessee not eligible for VSV scheme **unless the prosecution is compounded before filing of application**. The same has been clarified under revised FAQs issued dated 22 April 2020.
- Out of total additions made to the order, assessee has opted for appeal for only few additions and have accepted other additions – **Interest and penalty to be waived only for issues under appeal and not for all additions**.
- **Cases where application under VSV scheme – treated as null and void**
  - Where declarant is not in agreement with amount computed under VSV Scheme – He can apply for rectification for apparent errors (Cannot appeal against the same). If not rectified or if there is disagreement between amounts where declarant does not accept to pay the amount, VSV application to be treated as null and void
  - Payment is accepted but declarant cannot pay the amount due to financial difficulties, VSV application to be treated as null and void.
- **Where appeal includes any issues where the demand is reduced partially or fully under order giving effect - The declarant shall be liable to pay amount as if demand has not been reduced and the AO to pass rectification order to create the original demand against which the amount payable under VSV shall be adjusted.**

# Conclusion – Making an informed decision

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- The Scheme has been introduced to minimize the pending disputes by giving benefit to the assessee in the form of waiver of interest & penalty and immunity from prosecution. The same is intended to generate some revenue for the Government. It is left upon time to decide whether this scheme will turn successful or not.
- Considering the Covid19 crisis, it is expected that Government may grant some further relaxations to the scheme to make it attractive for the assesseees.
- On the part of the management, it is imperative to make an informed decision on opting / not opting for the scheme considering the provisions, critical aspects and calculation of cash outflow under both the cases.
- Presently, as the last date of making payment without additional taxes is 30 June 2020, it may be prudent to act swiftly and review all pending disputes to make an informed decision on the Scheme.
- Cases which may be suitable for opting for the Scheme and a flowchart depicting flow of activities to be undertaken by the management are presented on next pages.

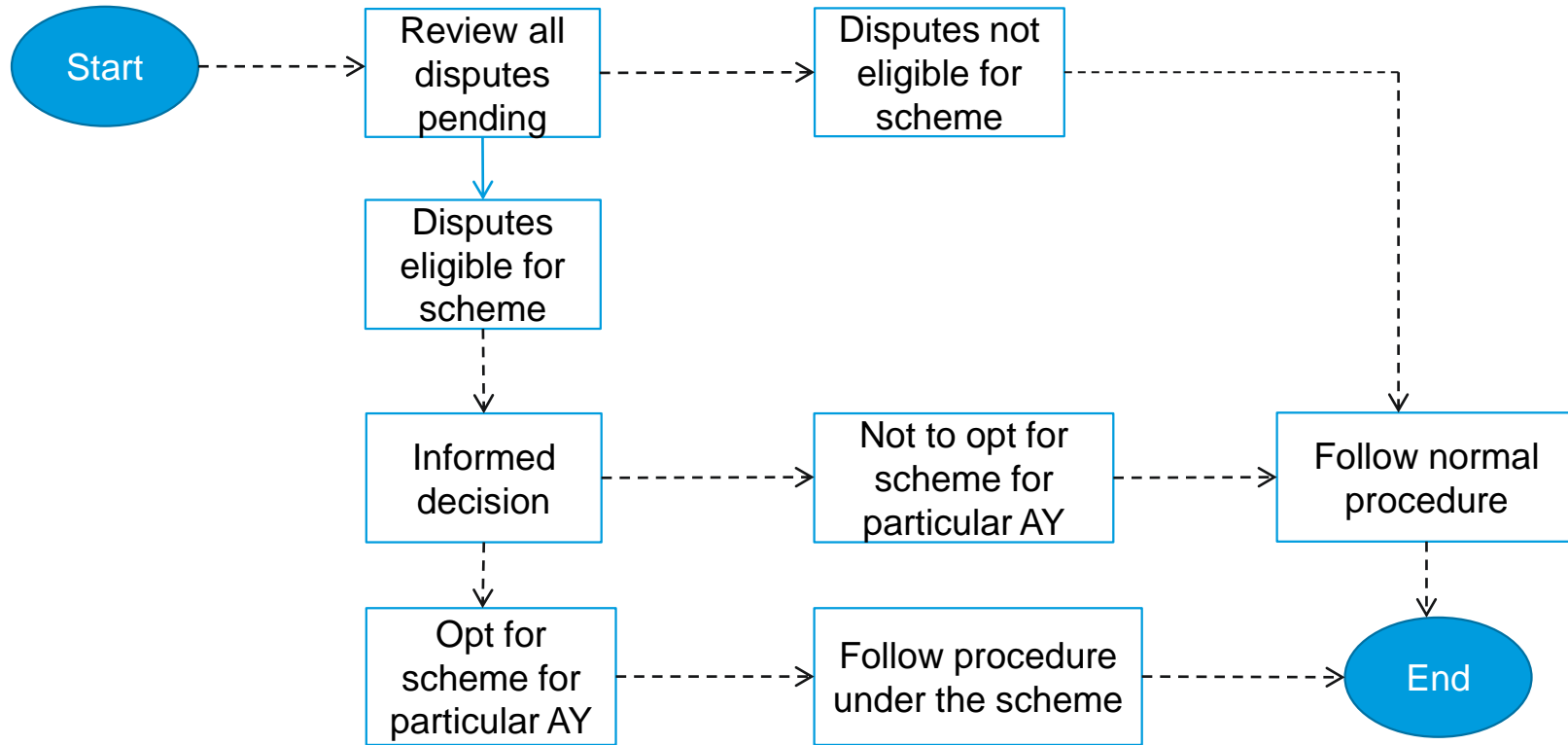
# Conclusion – Making an informed decision

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## Cases which may be suitable for Opting for the Scheme -

- Cases where the litigation cost (external and internal) is much higher than the disputed tax and the resultant tax benefit in the event of successful outcome.
- Long pending disputes where the disputed tax has not been paid with low probability of success – In such cases, the waiver of interest and penalty could be more than the tax amount itself.
- Dispute is covered by the verdict of H'ble Supreme Court in own case. Disputed tax to be considered as nil in such cases.
- Dispute relates to a foreign taxpayer who is eligible for the tax credit in its home country
- Based on cash flow analysis and the probability of the success, it appears beneficial to opt for the scheme.

# Conclusion – Making an informed decision





THANK YOU FOR  
YOUR TIME