

# **Direct Tax Vivad Se Vishwas Scheme – An Opportunity for Dispute Resolution**

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# DIRECT TAX VIVAD SE VISHWAS SCHEME 2020 – WAY FORWARD

Total Number of Disputes as on - 30.11.2019 - ₹.4.83 lakh

Total Number of Disputes as on - 30.11.2019 Rs.9.32 lakh Crores



## Remarks of the Juridiciary Authorities – on Tax Disputes

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*Vodafone International Holdings B.V. v. Union of India* [2012] 204 Taxman 408 (SC) in Civil Appeal No.733 of 2012 vide Para No.188

- ❖ *Demand of nearly Rs.12,000 crores by way of capital gains tax, would amount to imposing capital punishment since it lacks authority of law and therefore, stand quashed.*

## Remarks of the Juridiciary Authorities – on Tax Disputes

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*Director of Income Tax, Circle 26(1), New Delhi v. S.R.M.B. Diary Farming (P.) Ltd.* [\[2018\] 252 Taxman 1](#) (SC)

- ❖ "2. The propensity of Government Departments and public authorities to keep litigating through different tiers of judicial scrutiny is one of the reasons for docket explosion. The Income Tax Department of the Government of India is one of the major litigants. There are two departmental scrutiny at the level of the Assessing Officer and the Commissioner of Income Tax (Appeals) and thereafter an independent judicial scrutiny at the Income Tax Appellate Tribunal (hereinafter referred to as the 'ITAT') level followed by the legal issue which can be inquired into by the High Courts. The last tier is, of course, the jurisdiction under Article 136 of the Constitution of India before the Supreme Court.
- ❖ 3. Mindful of the phenomenon of the docket explosion and the rising litigation in the country, the Union of India in order to ensure the conduct of responsible litigation framed what is today known as the National Litigation Policy, to bring down the pendency of cases and get meaningful issues decided from the judicial forums rather than multiple tiers of scrutiny just for the sake of it. The Government, being a litigant in well over 50 per cent of the cases, has to take a lead in not being a compulsive litigant.

## Amnesty / Dispute Resolution Scheme – So far introduced by Govt. of India.

Sr. No.	Year	Scheme name
1	1951	VDS Tyagi Scheme
2	1965	Block voluntary disclosure scheme
3	1975	Voluntary disclosure scheme
4	1985	Amnesty scheme
5	1997	Voluntary disclosure of income scheme (VDIS-97)
6	2016	Income and Assets Declaration Scheme (IADS)
7	2016	Direct Tax Dispute Resolution Scheme, 2016
8	2016	Pradhan Mantri Garib Kalyan Yojana (PMGKY)

## Withdrawal of Appeals by Income Tax Department based upon Monetary Limits.

Appellate Forum	<u>Circular No. 3 of 2018 / dated.11<sup>th</sup> July 2018-</u> Monetary Limit up to 8 <sup>th</sup> August 2019 – in Rs.	Circular No. 17/2019 / 8th August 2019 Revised Monetary Limit from 8 <sup>th</sup> August 2019 – in Rs.
Before Income Tax Appellate Tribunal	20,00,000	50,00,000
Before High Court	50,00,000	1,00,00,000
Before Supreme Court	1,00,00,000	2,00,00,000

## Introduction of Direct Tax Vivad se Vishwas Scheme

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- ❖ Announcement of the Scheme in Budget 2020 – on 2<sup>nd</sup> February 2020
- ❖ Direct Tax Vivad se Vishwas Bill, 2020 in LOKA SABHA - 5<sup>th</sup> of February, 2020. Amendments to the provisions of the Bill - 14<sup>th</sup> Feb, 2020
- ❖ Bill was passed by LOK SABHA on - 4<sup>th</sup> March, 2020 .
- ❖ Bill was passed by Parliament - 13<sup>th</sup> March, 2020
- ❖ Assent of the President and published in the Official Gazette on - 17<sup>th</sup> March 2020 Direct Tax Vivad se Vishwas Rule 2020 - Notification No.18/2020, /18<sup>th</sup> March 2020
- ❖ FAQs issued - vide Circular No.7/2020 dated 04.03.2020



# Why this Scheme?



To reduce the disputed tax demand pending before appellate authorities i.e. CIT(A), ITAT, High Court and Supreme Court.

To generate timely revenue.



To save the time, energy and resources of tax payer as well as Government of India.



# **Benefits of the Scheme**



**Complete waiver of Interest, Penalty  
and Prosecution.**

**Sensible way to resolve disputes  
without moving to court.**

**Advantageous scheme for the  
taxpayers.**

## Applicability of the Scheme

- ❑ Disputes Covered: All disputes, subject to some exclusion,
- ❑ **Section 2(1)(o)"tax arrear" means,—**
  - ❖ (i)the aggregate amount of disputed tax, interest chargeable or charged, and penalty leviable or levied on such disputed tax; or
  - ❖ (ii)disputed interest; or
  - ❖ (iii)disputed penalty; or
  - ❖ (iv)disputed fee,

As determined under the provisions of the Income-tax Act;

- ❑ ***"Disputed income", in relation to an assessment year, means the or so much of the total income as is relatable to the disputed tax;***



## Eligibility Conditions

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- ☐ The **appeals/writs** filed by the taxpayers or the department.
- ☐ Disputes where the payment has already been made shall also be eligible.
- ☐ Cases in **arbitration** in India or Abroad.
- ☐ **Appeals / writs / SLP** filed on or before 31.01.2020 and pending. Orders for which time for filing appeal has not expired on 31.01.2020
- ☐ Case pending before Dispute Resolution Panel (DRP) on 31.01.2020
- ☐ Cases where DRP issued direction on or before 31.01.2020 but no order has been passed.
- ☐ Cases where assessee filed revision (Section-264) on or before 31.01.2020.
- ☐ Search case if the disputed demand is not exceeding Rs. 5 Crore for a particular financial year.

## Exclusions under the Scheme



- ❑ Search cases if disputed tax is more than Rs. 5 Crore.
- ❑ Prosecution cases under the Income-tax Act or IPC filed by the Department.
- ❑ Cases relating to undisclosed foreign income and assets.
- ❑ Cases completed on the basis of information from foreign countries as per section 90 or 90A.
- ❑ Cases covered under offense under IPC, the Unlawful Activities Activities (Prevention) Act, 1967, NDPS Act, 1985, PC Act, 1988, PMLA Act, 2002, COFEPOSA Act, 1974, Prohibition of Benami Property Transactions Act, 1988 and Special Court Trial in Securities Act, 1992.

# Who can be Appellant under the Scheme

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- ☐ APPELLANT - Section 2(1) (a)
- ☐ in whose case : Appeal or a WRP or SLP has been filed - by him or by the income-tax authority or by both and pending before an appellate forum on 31.01.2020
- ☐ an order has been passed in an appeal by: AO or Commissioner (Appeals) or ITAT or High Court in a Writ Petition ( Not Appeal) - the time for filing any appeal or SLP against such order has not expired on 31.01.2020.
- ☐ Who has filed his objections before the DRP u/s 144C and DRP has not issued any direction on or before 31.01.2020
- ☐ in whose case DRP has issued direction u/s 144C(5) and AO has not passed any order u/S 144C(13) on or before 31.03.2020
- ☐ who has filed an application for revision u/s 264 and such application is pending as on 31.03.2020 (however time period for filing revision petition has not expired as it is for one year)

**Note: "Appellate forum" - Section 2(1)(b) means - Supreme Court or High Court or Income Appellate Tribunal or Commissioner (Appeals)**

## Who can be Appellant under the Scheme – Few Points for discussion

- **Waiver applications** filed in respect of interest u/s 234A, 234B or 234C etc are not appeal within meaning of VSV & not covered under the scheme.
- **Dispute related to wealth tax, security transaction tax, commodity transaction tax and equalisation levy are not covered**
- **Appeal is filed before High Court and is pending for admission as on 31.1.2020, the same is eligible for VSV**  
Disputes pending before **AAR** not covered.
- Disputes pending before **Authority of Advance Ruling** not covered.
- If order of Advance Ruling is challenged in HC through WRIT and pending – it is covered.**
- Note: if the matter is related to PE in India and amount attributable to such PE is yet to be determined then it is not covered.**
- Search case if the disputed demand does not exceed ₹ 5 Crore for a particular financial year is covered**

## Who can be Appellant under the Scheme – Few Points for discussion

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- ❑ If Appellate Authority has set aside an order
  - ❖ *To the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction - the assessee would be eligible to avail VSVS for rest of items.*
  - ❖ *To cancel the assessment with a direction that assessment is to be framed de novo – Not covered under the VSVS*
- ❑ If appellant shall also be required to settle other issues - which have not been set aside in that assessment - either appeal is pending or time to file appeal has not expired - is covered.
- ❑ Writ filed against a notice issued u/s 148 & no assessment order has been passed ( no tax determined) - the assessee would not be eligible for VSVS –



## Who can be Appellant under the Scheme – Few Points for discussion

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### ISSUES: (Ref FAQ -12 of CBDT Circular).

- ☐ Assessment order was passed u/s 143(3) and is pending with ITAT.
- ☐ Another order was passed u/s 147 / 143(3) and that is pending with CIT (A)

**Appellant in this case has an option to settle either of the two appeals or both appeals for the same assessment year.**

- ❖ **If he decides to settle both appeals then he has to file only one declaration form.**
- ❖ **The disputed tax in this case would be the aggregate amount of disputed tax in both appeals**

**In this case the assessee needs to examine both the orders and disputed tax as income taken in the order of assessment u/s 143(3) may also be include when order passed u/s 147 / 143(3)).**

## Amount payable under the Scheme

SI No.	Nature of tax arrear	Appeals filed by Taxpayer		Appeals filed by department/ Appeal filed by assessee decided in favour for earlier years before higher forum	
		before 31 March 2020 *	after 1 April 2020 & up to 30 June 2020*	before 31 March 2020*	after 1 April 2020 & up to 30 June 2020*
A.	Where tax arrears consists of disputed tax, interest or penalty	100% of disputed tax	110% of disputed tax	50% of Amount of disputed tax	55% of disputed tax
B.	Where tax arrears related to disputed interest / penalty / fee	25% of disputed interest/ penalty/fee	30% of disputed interest/penalty/ fee	12.5% of disputed interest/penalty/fee	15% of disputed interest/penalty/fee
C.	Search cases	125% of disputed tax	135% of disputed tax	62.5% of disputed tax	67.5% of disputed tax

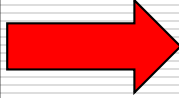


**Note: (i) Where 25% or 35% or 17.5% or 12.5% or 10% or 5% of disputed tax, as the case may be, exceeds the total of interest and penalty, such excess amount shall be ignored. \*(ii) The date announced as 30<sup>th</sup> June 2020 instead 31<sup>st</sup> March 2020.**

# What is Disputed tax?


“disputed tax”, in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder:-



# Disputed Tax – Section 2(1)(j)

Nature of disputes		Tax determination
Appeal, WRP or SLP Pending on 31.01.2020		Tax payable if such Appeal or WRP or SLP was to be decided against him;
Where an order in Appeal or WRP has been passed Appellate Forum on or before 31.01.2020 and the <u>time for filing Appeal / SLP against such order has not expired as on 31.01.2020</u>		the amount of tax payable after giving effect to the order so passed;
Order passed by the AO or before the 31.01.2020, and the time for filing Appeal has not expired as on that date,		Tax payable in accordance with such order;

# Disputed Tax – Section 2(1)(j)

Nature of disputes		Tax determination
Objection filed by the Appellant is <b>pending</b> before the <b>DRP u/s 144C</b> as on <b>31.03.2020</b> ,		Tax payable if the <u>DRP was to confirm the variation proposed in the draft order</u>
<u>Where direction issued by <b>DRP u/s 144C(5)</b> and <b>AO</b> has not passed the order u/s 144(13) on or before <b>31.01.2020</b></u>		Tax payable <u>as per assessment order to be passed by the <b>AO u/s 144(13)</b></u>
Where an <u>application for revision u/s 264 is pending</u> as on <b>31.03.2020</b>		Tax payable if such <u>application for revision was</u> <u>not</u> to be accepted.
<u>CIT – Appeal has issued notice of enhancement</u>		Disputed tax shall be increased by <u>tax pertaining to issues for which notice of enhancement</u> has been issued

## Disputed Tax – Few Issues

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- ❑ Eligible Search Cases – Case in which assessment has been made
- ❖ **U/S 143(3) - (Regular Assessment)** **OR**
- ❖ **U/S 144 – (Best Judgment Assessment)** **OR**
- ❖ **U/S 153A**–(Assessment of Searched Person) or **U/S 153C** (Assessment of other person whose money billion or valuable property found with searched person) – assessment based upon search initiated u/s 132/132A

**And amount of disputed tax does not exceeds five crore rupees.**

- ❑ **Effect of Rectification Application u/s 154:** Disputed tax in case of appeal or arbitration is pending as on 31.01.2020 would be calculated after giving effect to the rectification order passed (where Rectification Application files)

## Disputed Tax – Few Issues

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***If dispute in relation to an AY relates to reduction of MAT Credit u/s 115JAA / Alternate Tax Credit u/s 115JD or reduction of loss or depreciation:***

- the appellant shall have an option either to***
- ❖ (i) include the amount of tax related to such MAT credit or loss or depreciation in the amount of disputed tax and carry forward the MAT credit or loss or depreciation or***
- ❖ (ii) to carry forward the reduced tax credit or loss or depreciation.***

***CBDT prescribes the manner of computation of disputed tax under above circumstances in Rule 9 of the Direct Tax Vivad se Vishwas Rule 2020***



## Manner of computing disputed tax in case where loss or unabsorbed depreciation is reduced - Rule 9 of DTVSV Rules 2020:

- EXAMPLE: M/S KPL Ltd filed return of income u/s 139(1) declaring loss as Rs.20 lakhs and paid self-assessment tax as Nil. The department conducted assessment u/s 143(3) and the loss reduced to Rs.7.5 lakhs and also levied penalty on Under Reported income of Rs.12.50 lakhs. Against the assessment order of the Assessing Officer, the assessee filed the appeal in respect of loss reduced to Rs.7.5 lakhs
- Now M/s KPL Ltd has 2 options under this scheme:
  - Option 1: Pay tax on Rs.12.5 lakhs. Assessee will not have to pay Penalty leviable on this under reporting / undisclosed income. And also carry forward the loss of Rs.20.00 lakhs (including Rs.12.5 lakhs on which tax is paid) OR
  - Option 2: To carry forward the reduced loss of Rs.7.5 lakhs. Thus forgoing the loss of Rs.12.5 lakhs to be carried forward Pay 25 % of the amount of penalty leviable on Rs.12.5 lakhs under reporting

**Where Appellate Authority has set aside an order (except cancellation) with specific direction to file of AO and the applicant can settle other issues which are not set aside and in respect of which appeal is pending -**

**Can avail the VSVS and the tax determined as follows.**

**EXAMPLE :** M/S X Ltd has filed the return of income. The tax on returned income was Rs.10,000 and interest was Rs.1,000. The amount of Rs 11,000 was paid before filing the return. The AO made two additions of Rs.20,000/- and Rs.30,000/-. The tax (including surcharge and cess) on this comes to Rs.6,240/- and Rs.9,360/- and interest comes to Rs.2,500 and Rs.3,500 respectively.

- ☐ Commissioner (Appeals) has confirmed the two additions.
- ☐ ITAT confirmed the first addition (Rs.20,000/-) and set aside the second addition (Rs.30,000/) to the file of AO for verification with a specific direction. Assessee appeals against the order of ITAT with respect to first addition (or has not filed appeal as time limit to file appeal against the order has not expired). The assessee can avail the Vivad se Vishwas if declaration covers both the additions.
- ☐ In this case the disputed tax would be the sum of disputed tax on both the additions i.e. Rs.6240/- plus Rs. 9,360/-. In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).



## What is Disputed interest?

“ **Disputed interest**“ means the interest determined in any case under the provisions of Income Tax Act, 1961

- ❑ Such interest is not charged or chargeable on disputed tax;
- ❑ An appeal has been filed by the appellant in respect of such interest;
- ❑ It covers those cases wherein the assessee is not disputing quantum addition but calculation of interest - Examples

- ❖ *u/s 234A : for delay in filing the return of income,*
- ❖ *U/S 234B: for default in payment of advance tax,*
- ❖ *U/S 234C: for deferment of payment of instalments of advance tax,*
- ❖ *U/S 234D: for excess refund granted to the taxpayer,*
- ❖ *U/S 201(1A): for failure to deduct tax at source / delay in payment of TDS.*
- ❖ *u/s 206C(7): for failure to collect tax at source / delay in payment of TCS.*

# What is disputed Disputed Penalty?



- ❑ **“Disputed Penalty”** means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where—
- ❖ such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be;
  - ❖ an appeal has been filed by the appellant in respect of such penalty;
  - Example: Penalties like 271A, 271B, 271C, 271D, 271E, 271(1)(c), 271AAA, 271AAB etc.

## Disputed Fee –

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- ❑ "disputed fee" means the fee determined under the provisions of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant,

### Example: Appeal Independent of Income

- ❖ **U/S 234 E:** *late fee for non-filing / late filing of TDS / TCS returns*
- ❖ **U/S 234 G** - Fee for default relating to statement or certificate (by research association, university, college or other institution etc)

### Example: Appeal dependent of Income

- ❖ **U/S 234 F:** *fails to file the income tax return within the prescribed time limit*





**Under this Scheme.....**



## STEP -1

### Declaration to be filed in respect of all issues in appeal / disputes:

- ❑ Declarant shall file a declaration in accordance with section 4
- ❖ Declaration in Form – 1 (under rule 3) which contains of general information, information related to eligibility, disputes, tax arrears amount payable, payment against tax demand and Schedule.
- ❖ A Schedules applicable where declaration relates to **disputed tax** (Applicable in case of PAN)
- ❖ B. Schedules applicable where declaration relates to **disputed TDS/TCS** (Applicable for TAN):
- ❖ C. Schedule applicable where declaration relates to **disputed penalty, interest or fee only** (Applicable for PAN & TAN)
- ❖ Schedule D : In case the appellant opts not to pay tax on **additions having effect of reducing loss/depreciation or**
- ❖ **MAT credit carried forward** then the relevant column of the following schedule is to be filled up.





## STEP -1

**Declaration to be filed in respect of all issues in appeal / disputes:**

- ❑ Declarant shall file a declaration in accordance with section 4
- ❖ **Undertaking in Form-2 [section 4(5)] before Designated Authority (DA)**
- ❖ **Designated Authority (DA) – Not below the rank of a CIT notified by the PCIT.**
  
- ❑ Both shall be signed and verified by the declarant or any person competent to verify the return of income on his behalf in accordance with section 140 of the Income Tax Act, 1961.



## STEP -1

### Declaration to be filed in respect of all issues in appeal / disputes: - NOTE

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- ❑ (i) Declaration form is to be filed assessment year wise i.e. only one declaration for one assessment year.
- ❑ (ii) Where there are two appeals filed for an assessment year – one by the appellant and one by the tax department, the appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both.
- ❑ Deemed withdrawal of appeal pending before CIT(A) and ITAT shall be deemed to have been withdrawn from the date on which certificate u/s 5(1) is issued by the DA - Sec 4(2)
- ❑ Withdrawal of appeal before HC or Supreme Court after issuance of certificate u/s 5(1) and submission of proof of such withdrawal along with intimation of payment to DA u/s 5(2) (within 15 days) – Section 4
- ❑ Proof of withdrawal of claim in any proceeding for arbitration, conciliation or mediation after issuance of certificate u/s 5(1) and submission along with intimation of payment u/s 5(2) DA – Section 4(4).



## STEP - 2

### Form of Certificate by the designated Authority:

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#### Certificate by DA - [Section 5(1) read with Rule 4].

- ❑ DA shall, within a period of fifteen days from the date of receipt of the declaration by order,
  - ❖ **determine the amount payable** by the declarant in accordance with DTVSV Act.
  - ❖ **grant a certificate IN Form – 3** to the declarant containing particulars of the tax arrear and the amount payable after such determination
- ❑ **Certificate in Form -3 shall cover** - details of disputes settled, assessment year wise, tax arrear, amount payable u/s - 3, amount already paid and balance amount payable / refundable.
- ❑ **Declarant is also directed to pay within 15 days** from the date of receipt of the certificate.
- ❑ **Consequence of non payment:** declaration under **Form -1 shall be treated as void** and shall be deemed never to have been made.



## STEP - 3

### Intimation of payment by the declarant

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#### Intimation of payment by the declarant:

- ❑ **Declarant shall pay the amount determined u/s 5(1) -**
  - ❖ as provided in the **Form - 3** within 15 days of the date of receipt of the certificate - **Section 5(2)**.
- ❑ **Filing of Form – 4 by the declarant to the designated authority**
  - ❖ detail of payments made – BSR Code of Bank, Date of Deposit, Challan No. and amount paid
  - ❖ proof of withdrawal of appeal, objection, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim

**Note: Any excess amount paid before filing declaration shall be refunded without any interest u/s 244A.**



## STEP - 4

### Order by Designated Authority

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#### Order by designated authority:

- ❑ **Order in Form -5** shall be passed on receipt of payment for full and final settlement of tax arrear u/s 5 (2) read with section 6 of the act.
- ❑ **DA in exercising power conferred u/s 5(2) read with section 6 shall certify that**
  - ❖ specified sum has been paid towards full and final settlement of tax arrear by declarant ( Ref order number).
  - ❖ the immunity is granted - from instituting any proceedings for prosecution
    - for any offence or
    - from imposition of any penalty
    - in respect of tax arrear as determined (with AY, nature of disputes, nature of tax arrear and amount of tax arrear).



## STEP - 4

### Order by Designated Authority

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#### Order by designated authority:

- ☐ 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.
- ☐ The copy of the order shall be issued to
  - ❖ The Declarant
  - ❖ Assessing Officer,
  - ❖ concerned Principal Commissioner of Income-tax and
  - ❖ concerned Appellate Forum.



## STEP - 4

### Order by Designated Authority

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- *Note: The order passed determined the amount payable*
- ❖ *shall be conclusive as to the matters stated therein.*
- ❖ *no matter covered by such order shall be reopened in any other proceeding under IT act / other law or any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India - Section 5 (3).*



## **Manner of furnishing of Form - 1, Form – 2, Form – 3 and Form – 4 prescribes under the DTVSV Rule 2020 - Rule 6 of Direct Tax Vivad se Vishwas Act 2020**

- ☐ **Form – 1 & Form - 2 ( rule 3) and Form - 4 (in rule 5) - shall be furnished**
- ❖ **electronically under digital signature if the return of income is required to be furnished under digital signature or,**
- ❖ **in other cases through electronic verification code. Ref: Notification No. 2/2015 dt. 13th of July 2015**
- ☐ **To be signed & verified by the declarant or any person who is competent to verify the ROI in accordance with section 140 of IT Act electronically under**
- ☐ **Electronic Verification Code (EVC) - 10 digit alphanumeric code which is sent to the registered mobile of the tax filer while filing the returns online. An EVC can be generated through the e-filing portal of Income Tax Department.**

**[Ref: CBDT Notification No. 12 of 2020 / the 19th March, 2020]**

## Few Clarification FAQ issued vide Circular No.7/202 dated.4<sup>th</sup> March 2020)

- ☐ **Can DA rectify the Order u/s 5 – Yes in case of any error apparent in record.**
- ☐ **No appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrears mentioned in the declaration in respect of which order is passed by the DA or the payment of sum determined by the DA.**
- ☐ **Department shall withdraw such appeal / writ / SLP – on intimation of payment to the DA by the appellant**
- ☐ **Declaration nul and void - Once declaration is filed under VSV and for financial difficulties, payment is not made**
- ☐ **Appeal effect of Appellate Forum shall be given to reduce tax demand reduced partly or fully reduced and pass the order creating the demand against which the amount payable shall be adjusted**

## Few Clarification FAQ issued vide Circular No.7/202 dated.4<sup>th</sup> March 2020)

- 
- ❑ **Substantive addition:** On settlement of dispute related to substantive addition, AO shall pass rectification order deleting the protective addition relating to the same issue in the case of the assessee or in the case of another assessee.
  - ❑ When addition was made u/s 143(3) on two issues whereas appeal is filed only for one addition, in such cases
    - ❖ **interest and penalty will be waived** only in respect of the issue which is disputed in appeal and for which declaration is filed.
    - ❖ **For the undisputed issue** - the tax, interest and penalty shall be payable,
  - ❑ **If taxes are paid after availing the benefits of the VSV** and later the amount shall not be refundable to the tax payer under any circumstances.

## Few Clarification FAQ issued vide Circular No.7/202 dated.4<sup>th</sup> March 2020)

- *Example: In case of M/S LLK Ltd, there are two appeals pending; one against the order under section 201 of the Act for non-deduction of TDS and another one against the order under section 143 (3) of the Act for disallowance under section 40(a)(i)/(ia) of the Act. The disallowance under section 40 is with respect to same issue on which order under section 201 has been issued. If the dispute is settled with respect to order under section 201, assessee will not be required to pay any tax on the issue relating to disallowance under section 40(a)(i)/(ia) of the Act, in accordance*
- with the provision of section 40(a)(i)/(ia) of the Act.*
- *In case, in the order under section 143(3) there are other issues as well, and the appellant wants to settle the dispute with respect to order under section 143(3) as well, then the disallowance under section 40(a)(i)/(ia) of the Act relating to the issue on which he has already settled liability under section 201 would be ignored for calculating disputed tax.*

## Few Clarification FAQ issued vide Circular No.7/202 dated.4<sup>th</sup> March 2020)

- *If the assessee has challenged the order under section 201 on merits and has won in the Supreme Court or the order of any appellate authority below Supreme Court on this issue in favour of the assessee has not been challenged by the Department on merit (not because appeal was not filed on account of monetary limit for filing of appeal as per applicable CBDT circular), then in a case where disallowance under section 40(a)(i)/(ia) of the Act is in consequence of such order under section 201 and is part of disputed income as per order under section 143(3) in his case, such disallowance would be ignored for calculating disputed tax, in accordance with the proviso to section 40(a)(i)/(ia) of the Act.*
- *It is clarified that if the assessee has made payment against the addition representing section 40(a)(i)/(ia) disallowance, the assessee shall not be entitled to interest under section 244A of the Act on amount refundable, if any, under Vivad se Vishwas,*
- *It is further clarified that if the assessee wish to settle disallowance under section 40(a)(i)/(ia) in a search case on the basis of settlement of the dispute under section 201, he shall be required to pay higher amount as applicable for search cases for settling dispute in respect of that TDS default under section 201.*



## What are the circumstances where it is treated that no declaration made u/s 4?

- ❑ It will be presumed that declaration u/s 4(1) shall be presumed never to have been made if,—
  - ❖ (a) any material particular furnished in the declaration is found to be false at any stage;
  - ❖ (b) the declarant violates any of the conditions referred to in this Act;
  - ❖ (c) the declarant acts which is not in accordance with the undertaking given by him u/s 5(5) - waiving his right.....
  - ❖ (d) non-payment of amount payable within the said period of 15 days

## Refund of excess amount paid - Example

- **Example:** It is a non search case where an assessee is in appeal before Commissioner (Appeals). The tax on returned income (including surcharge and cess) comes to Rs.30,000 and interest under section 234B of Rs.1,000. Assessee has paid this amount of Rs.31,000 at the time of filing his tax return. During assessment an addition is made and additional demand of Rs.16,000 has been raised, which comprises of disputed tax (including surcharge and cess) of Rs.10,000 and interest on such disputed tax of Rs.6000. Penalty has been initiated separately.
- Assessee has paid the demand of Rs.14,000 during pendency of appeal; however interest under section 220 of the Act is yet to be calculated. Assessee files a declaration, which is accepted and certificate is issued by the designated authority (DA). The disputed tax of Rs.10,000 (at 100%) is to be paid on or before 30<sup>th</sup> June 2020. Since he has already paid Rs.14,000, he would be entitled to refund of Rs.4,000 (without section 244A interest). Further, the interest leviable under section 220 and penalty leviable shall also be waived



## Computation of Disputed Tax - QUESTION

**EXAMPLE-1: Mr A is a resident Individual whose age is less than 60 years having following relevant information. Calculate disputed tax to be payable by the taxpayer opting for 'Direct Tax Vivad Se Vishwas Bill' and he pays disputed tax on or before March 31, 2020. Relevant information is as follows.**

(a)	Relevant Assessment Year	2017-18
(b)	Taxable income as per income-tax return:	Rs. 12,00,000
(c)	Total tax paid:	Rs. 1,90,550
(d)	Addition made by the Assessing Officer:	Rs. 3,50,000
(e)	Additions deleted by the CIT(A):	Rs. 1,50,000
(f)	Additions confirmed by the CIT(A):	Rs. 2,00,000.
(g)	Interest charged in respect of additions:	Rs. 65,145
(h)	Penalty charged in respect of additions:	Rs. 1,73.295

***Scenario 1: Neither taxpayer nor Dept. challenge the order of CIT(A) and time limit for filing an appeal before ITAT has not expired on or before 31-01-2020.***

**Though none of the aggrieved party has filed an appeal before the appellate forum, the taxpayer can opt for the scheme as the time limit for filing an appeal has not expired on or before 31-01-2020.**

**The disputed tax in this scenario shall be calculated as per Section 2(j)(B) of Direct Tax Vivad se Vishwas Act 2020, which shall be the amount of tax payable by the taxpayer after giving effect to the order so passed. In this case, the disputed tax shall be computed after giving effect to the order**

<b><i>Particulars</i></b>	<b><i>Amount - Rs</i></b>
<b>Net taxable income</b>	<b>12,00,000</b>
<b>Add: Additions made by the Assessing Officer</b>	<b>3,50,000</b>
<b>Less: Additions deleted by CIT(A)</b>	<b>-1,50,000</b>
<b>Total taxable income [A]</b>	<b>14,00,000</b>
<b>Income-tax (including cess) [B]</b>	<b>2,53,350</b>
<b>Less: Tax already paid with the return of income</b>	<b>-1,90,550</b>
<b>Tax to be paid under the scheme</b>	<b>62,800</b>

**Mr A shall be required to pay Rs.62,800 only and interest/penalty levied by AO shall be waived off completely.**

***Scenario 2: Taxpayer files an appeal before the ITAT against the confirmed additions. However, dept. does not file a cross appeal against deleted additions. Appeal is pending before the ITAT as on 31-01-2020.***

**The disputed tax in this scenario shall be calculated as per Section 2(j)(A) Direct Tax Vivad se Vishwas Act 2020, which shall be the amount of tax payable by the taxpayer if such appeal was to be decided against him. In this case, the disputed tax shall be computed assuming that the ITAT decides against taxpayer and confirms the order of the CIT(A). The amount of disputed tax under this scenario shall be similar to scenario - 1.**

**Scenario 3: Taxpayer files an appeal before the ITAT against the confirmed additions and dept. also files cross appeal against deleted additions. Appeal is pending before the ITAT as on 31-01-2020.**

In this scenario, the taxpayer has a choice, he can settle issue related to confirmed additions or he can settle issue related to deleted additions or he can settle both.

If taxpayer wants to settle both the issues, the disputed tax in this scenario shall be calculated as per section 2(j)(A) Direct Tax Vivad se Vishwas Act 2020 , which shall be the amount of tax payable by the taxpayer if such appeal was to be decided against him. In this case, the disputed tax shall be computed assuming that the ITAT decides against taxpayer in both the appeals filed by him and the dept. However, on the part of additions deleted by CIT(A), only 50% of disputed tax is to be paid by the taxpayer.

**Computation of the amount of disputed tax can be done in the Step 1: Calculate tax on total income including all additions made by the assessing officer.**

<b>Particulars</b>	<b>Amount – Rs</b>
Net taxable income	12,00,000
Add: Additions made AO	3,50,000
Total taxable income [A]	15,50,000
Income-tax (including cess) [B]	2,98,700
Average tax rate [C = B/A*100]	19.27%

**Step 2: Calculate the disputed tax**

<b>Particulars</b>	<b>Tax on disputed income – Rs.</b>
Additions deleted by the CIT(A) [D]	1,50,000
Additions confirmed by the CIT(A) [E]	2,00,000
Total disputed income [F]	3,50,000
Total tax liability after assessment	2,98,700
Less: Tax on disputed income deleted by the CIT(A) [G = C * D] * 50%	-14,453
Total disputed tax [H ]	2,84,247
Less: Tax already paid with the return of income	-1,90,550
Tax to be paid under the scheme	93,697

**Mr A shall be required to pay Rs. 93,697 only and interest/penalty levied by AO shall be waived off completely.**

**Scenario 4: Dept. files an appeal before the ITAT against the additions deleted by the CIT(A) and taxpayer does not file cross appeal against confirmed additions. Appeal is pending before the ITAT as on 31-01-2020.**

The disputed tax in this scenario shall be calculated as per clause section 2(j)(A) of Direct Tax Vivad se Vishwas Act 2020 , which shall be the amount of tax payable by the taxpayer if such appeal was to be decided against him. In this case, the disputed tax shall be computed assuming that the ITAT decides against taxpayer in the appeal filed by the dept. In respect of additions confirmed by the CIT(A), which is not challenged by the assessee before the ITAT, the assessee shall be liable to pay the amount of tax and the penalty & interest thereon.

**The amount of disputed tax shall be the same as computed in Scenario 3. However, the total amount payable shall be different.**

**Calculation of total amount payable by the assessee for Assessment Year 2017-18 shall be as under:**

<b>Particulars</b>	<b>Amount – Rs.</b>
Additions by Assessing Officer [A]	3,50,000
Additions confirmed by CIT(A) in respect of which scheme cannot be availed [B]	2,00,000
Interest levied by the Assessing Officer [C]	65,145
Penalty levied by the Assessing Officer [D]	1,73,295
Tax payable ( <i>calculated in scenario 3</i> )	93,697
Add: Interest on confirmed additions [ C/A*B]	37,226
Add: Penalty on confirmed additions [ D/A*B]	99,026
<b>Total disputed tax [H ]</b>	<b>2,29,949</b>



# Features

- **Refund of Excess Amount:** If the amount paid by the taxpayer before filing declaration exceeds the amount payable under the Scheme, he would be granted the refund for such excess amount.
- **No Refund:** Any amount paid in pursuance of the scheme shall not be refundable under any circumstances.
- **Removal of Difficulty:** The Central Government may by order not inconsistent with the provisions of the scheme remove the difficulty.

