

## Vivad Se Vishwas Act, 2020 under Direct Tax Regime

In the Budget 2020-2021 Hon'ble Finance Minister Nirmala Sitharaman has announced a New Scheme in Direct Tax "Vivad Se Vishwas" likewise "Sabka Vishwas-Legacy Dispute Resolution Scheme 2019" under Indirect Tax.

"Sabka Vishwas- Legacy Dispute Resolution Scheme 2019" was introduced with an aim for resolution and settlement of pending cases of Central Excise, Service Tax. Similarly, in Direct Tax regime "Vivad Se Vishwas" Scheme has been introduced so that taxpayers whose tax demands and disputes **related to Income Tax** pending in multiple forums **as on 31<sup>st</sup> January, 2020** [irrespective of whether the demand is pending or has been paid], can pay that taxes and settle disputes by 31<sup>st</sup> **March, 2020**, and get a complete waiver of interest and penalty. In case of failure to pay tax within 31<sup>st</sup> March 2020, that defaulter taxpayer will be allowed to pay his taxes till **30<sup>th</sup> June 2020**, but with **10% more on the tax**. The appeals and disputed matters might be related to any assessment years, even disputed matters might be related to the appeal against the tax determined on defaults in respect of TDS or TCS.

### Amount payable for arrear tax demand or resolution of disputes under this scheme

#### Amount paid on or before 31.03.2020

<u>Type of Tax</u>	<u>Amount payable on or before 31 March 2020</u>	<u>Relief</u>
Tax arrears include disputed tax, disputed interest and disputed penalty	Amount of the disputed tax	100% relief from disputed Interest & Penalty
Tax arrears relates to only disputed interest or disputed penalty or disputed fee [Not include disputed tax]	25% of disputed interest or disputed penalty or disputed fee	75% of the disputed Interest, penalty and Fees

#### Amount paid after 31.03.2020 but before 30.06.2020

<u>Type of Tax</u>	<u>Amount payable after 31 March 2020, but before 30<sup>th</sup> June 2020</u>	<u>Relief</u>
Tax arrears include disputed tax, disputed interest and disputed penalty	Amount of disputed tax + 10% thereof. The additional 10% will be restricted to the amount of interest and penalty	100% relief from disputed Interest & Penalty.
Tax arrears relates to only disputed interest or disputed penalty or disputed fee [Not include disputed tax]	30% of disputed interest or disputed penalty or disputed fee	70% of the disputed Interest, penalty and Fees.

### Definition of Appellant under this scheme

According to this Scheme, the income tax authority, or the person, or both, whose appeal is pending before any appellate forum as on 31<sup>st</sup> January, 2020 will be treated as appellant.

### Definition of Appellate Forums under this scheme

Supreme Court, the High Courts, the Income Tax Appellate Tribunals, and the Commissioner (Appeals) will be treated as appellate forum under this scheme.

However there is no clarity on the cases against which order has been passed by AO (Assessing Officer) but appeal has not been filed.

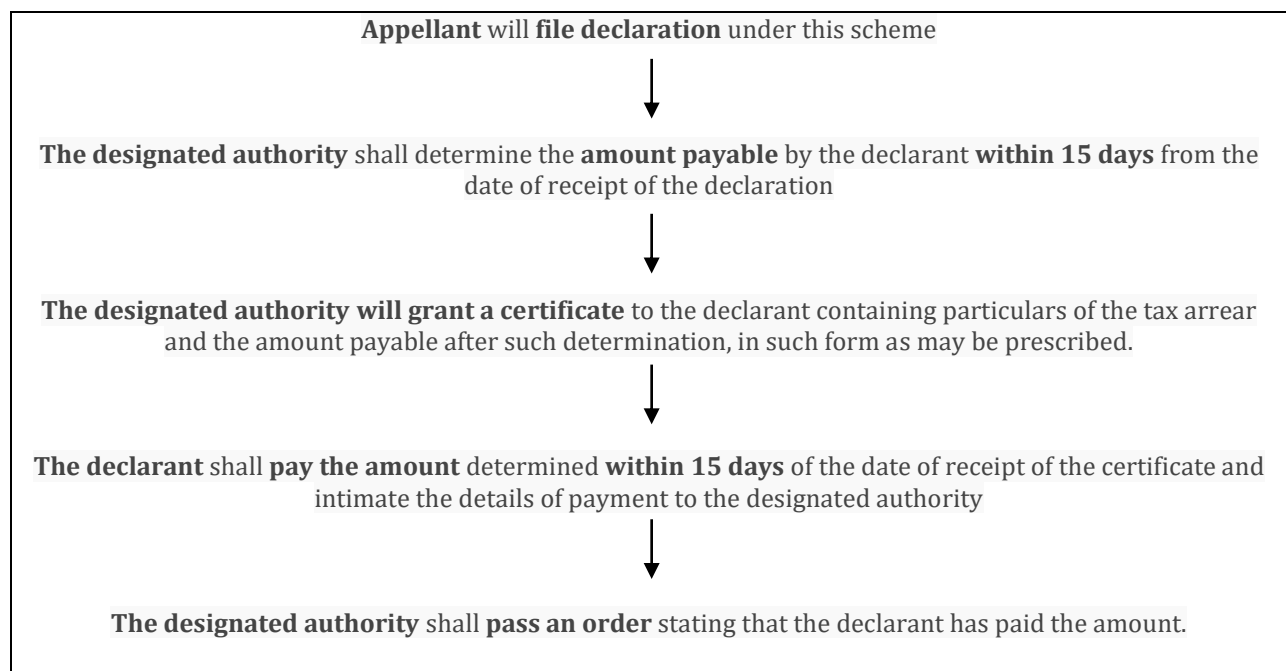
## Definition of Designated Authority under this scheme

The Principal Chief Commissioner will designate an officer, not below the rank of a Commissioner of Income Tax, as the designated authority to manage and resolve the disputed matters in Direct Tax era under this scheme

## Benefits of the Scheme

- ✓ Government will generate timely revenue
- ✓ Taxpayers will be able to utilize the time, energy and resources saved by opting this dispute resolution scheme towards their business activities.
- ✓ Once a dispute is resolved as per this scheme, the designated authority cannot levy interest or penalty in relation to that dispute.
- ✓ No appellate forum can make a decision in relation to that dispute which has been resolved already. Such matters cannot be reopened in any proceeding under any law, including the IT Act.

## Time and Manner of payment of Disputed Tax under Vivad se Vishwas Act



## Revival of disputes and claims

- ✓ If particulars submitted by the appellant are found to be false,
- ✓ The appellant violates any of the conditions referred to in the IT Act
- ✓ The appellant seeks any remedy or claim in relation to that dispute.

Therefore all proceedings and claims withdrawn based on the declaration of appellant will be deemed to have been revived.

## Exclusion of disputes from this Scheme

- Disputed tax arising out of search or seizure proceedings;

*The Income Tax Officer after getting the information that Mr. Y is in the possession of unaccounted cash of Rs. 50 Lakhs initiated search and seizure procedure u/s 132 since that unaccounted cash represents income which should be taxed. In this Case, Vivad se Viswas Scheme is not applicable*

- The prosecution has been initiated before filing of the declaration;

*An assessee had restrained and not allowed the officer authorized u/s 132 of the Act to inspect the documents maintained in electronic form and books of accounts.. In this situation assessee shall be liable for prosecution u/s 275B. In this situation, Vivad se Viswas Scheme is not applicable even if the assess wants to file declaration under this new scheme*

- Tax arrears is in relation to undisclosed foreign source income

*Mr. B, an Indian Resident, has earned prize money of Rs. 20 Lakhs by winning a lottery in Canada and suppressed this income in Income Tax Return which must be taxable in India. In this case Vivad se Viswas Scheme is not applicable*

- Where an addition is based on the information received from a foreign country as part of an exchange of information u/s 90 or 90A;

*An assessee having income from Foreign Country has suppressed his foreign income partly. However, under tax credit method, the total foreign income should be taxed in the country from where income has been arised, in addition to the country of residence. In this case Vivad se Viswas Scheme is not applicable*

- Where enhancement proposed by the CIT(A).

*A.O.(Assessing officer) has disallowed certain expenses of Rs. 1,00,000 to the returned income of PQR Ltd and this has been brought to the notice by A.O to CIT(A). Then CIT(A) rectified the mistake and as per instruction of CIT(A) A.O served demand notice to assessee. In this case Vivad se Viswas Scheme is not applicable*

- Where any person who has been detained under The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, before the filing of a declaration;

*An assessee was caught red handed for smuggling of gold and detained. That assessee is not eligible to take benefit of Vivad se Viswas Scheme*

- Where, Any person, in whose case the prosecution has been initiated prior to the filing of a declaration under any of the specified acts

*An assessee against whom prosecution under Prevention of Money Laundering Act, 2002 or Prohibition of Benami Property Transactions Act, 1988, etc. are pending is not eligible to take benefit of Vivad se Viswas Scheme*

- Any person notified under Special Court (Trial of Offences Relating to Securities) Act, 1992, before the filing of a declaration

Over the years, the number of pending appeals filed by taxpayers as well as Government were increasing day by day since number of filed appeals is much higher than the number of disposed appeals. As a result, huge amount of disputed tax arrears is locked-up in these appeals. As on the 30th November, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Therefore, there is an urgent need to provide such type of dispute resolution scheme as one time solution for long time pending disputes.

To enjoy the benefit of this Scheme to resolve disputes in Direct Tax, the appellant will have to furnish an undertaking waiving his rights to seek any remedy or claim in relation to that dispute under any law, including the Income Tax Act, 1961 (IT Act). Any claims already filed in relation to the dispute must be withdrawn before filing the declaration.

The proposed Bill shall come into the force on the date it receives the assent of the President and declaration may be made thereafter up to the date to be notified by the Government.