

## Vivaad Se Vishwas Scheme - from Controversy to Confidence

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On February 5, 2020, the Government tabled The Direct Tax Vivad se Vishwas Bill, 2020 (“The VVS”) in line with the announcement made in the budget speech by the Honourable Finance Minister Ms Nirmala Sitharaman on February 1, 2020. It shall come into effect after it is passed by both the Houses of Parliament and is given assent by the President of India.

### Background

As mentioned by the Honourable Finance Minister, currently there are 4.83 lakh direct tax cases pending at various appellate forums. During the course of the years, the pendency of appeals has increased due to the fact that the number of appeals that are filed are much higher than the number of appeals that are disposed of every year. As mentioned in The VVS scheme, as on November 30, 2019, the amount of disputed direct tax arrears is Rs. 9.32 lakh crores. Considering that the actual direct tax collection in the financial year 2018-19 was Rs.11.37 lakh crores, the disputed tax arrears constitute nearly one year of direct tax collection.

The Scheme further in its statement of objects and reasons notes that “the tax disputes consume copious amount of time, energy and resources both on the part of the Government as well as taxpayers. Moreover, they also deprive the Government of the timely collection of revenue. Therefore, there is an urgent need to provide for resolution of pending tax disputes. This will not only benefit the Government by generating timely revenue but also the taxpayers who will be able to deploy the time, energy and resources saved by opting for such dispute resolution towards their business activities.”

### Applicability

The provisions of The VVS are applicable to settle direct tax disputes in appeals filed by the taxpayer or the Income Tax authority, which are pending before the Commissioner of Income Tax (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court as on the January 31, 2020, subject to certain exceptions prescribed for search cases, matters where prosecutions have been initiated etc. The VVS also includes writ petitions within its ambit.

Under this scheme, taxpayers whose tax demands are locked in dispute can pay due taxes by March 31, 2020 and get a complete waiver of interest and penalty. If the taxpayer is not able to pay till March 31, 2020, there is an extension to pay available till June 30, 2020 (as announced in the budget speech) by paying 10 percent more than the disputed tax. The following table has been provided in the VVS to compute the disputed amount payable:

Sr No.	Nature of Tax Arrears	Amount payable on or before March 31, 2020	Amount payable on or after April 1, 2020 but before the last date
1.	Where the 'tax arrears' is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax or penalty leviable or levied on such disputed tax	100% of the disputed tax	110% of the disputed tax [If 10% of disputed tax exceeds the total disputed interest and penalty, such excess to be ignored]
2.	Where the tax arrears are related to disputed interest or disputed penalty or disputed fee	25% of the disputed penalty or interest or fee	30% percent of the disputed penalty or interest or fee

There is no option to rectify the mistakes in computation of the disputed demand amounts. In case there is an application pending for rectification, there should have been an option provided for expeditious disposal of such applications.

## **Procedure**

The declarant (Taxpayer/Revenue) is required to withdraw the appeal from the appellate forums and is required to file proof of such withdrawal along with the declaration.

Once the declaration is filed as per Section 3 of The VVS by a declarant, the designated authority is required to issue a certificate determining the amount payable by the taxpayer within a period of 15 days. The taxpayer is required to pay the amount specified within 15 days from the date of receipt of the certificate. Thereafter, the designated authority shall pass an order stating that the amount has been paid.

It appears that even if the declaration is made before March 31, 2020 but the payment is made post March 31, 2020 i.e. within 15 days of the designated authority certificate, the higher payment of 110% of the disputed tax will be applicable.

## **Limitations**

It is important to note that in case the assessment has been framed by the assessing officer on or before January 31, 2020, but the appeal has not been filed on or before January 31, 2020 and since no appeal is pending before an appellate forum as on January 31, 2020, the taxpayer will not be eligible for the benefit of The VVS. Similarly, if the appeal has been disposed of by an appellate forum on or before January 31, 2020 and no appeal has been filed before the higher appellate forum on or before January 31, 2020 and there is still time to file the appeal, such taxpayer may not be eligible for the benefit of The VVS.

Take for instance this example- the CIT(A) order is received by the assessee on January 15, 2020. The appeal before the ITAT is supposed to be filed within 60 days of the receipt of the CIT(A) order. As on January 31, 2020, the assessee has not filed an appeal yet. Hence, assesses who would have wanted to avail the scheme in such cases, can not do so since no appeal would be pending as on January 31, 2020. The above logic would apply to appeals at all levels, hence it is not fair to the assesses whose appeal is NOT pending since the time limitation for filing the appeal has not expired.

It could be more helpful if The VVS is also made applicable to appeals filed upto a later date, say February 29, 2020 to encourage taxpayers to pay taxes and close litigation in respect of any recent orders.

## **Dispute Resolution Panel cases**

Cases where the taxpayer has filed objections before the Dispute Resolution Panel against a draft assessment order passed in accordance with the provision of Section 144C and the disposal of the objections and passing of the final assessment order is pending as on January 31, 2020, the taxpayer will not be eligible for the benefit of The VVS as filing of objections before DRP is not an appeal and further, the DRP has not been covered in the Scheme specifically.

It would be helpful to get a clarification on the same and make cases before the DRP also eligible for benefit under the scheme.

## **Right of litigation/Settlement of disputed issue**

The scheme will be applied on an order and not on an issue basis. Hence, to pursue this Scheme, the assessee will have to give up its right of litigation in respect of all the issues under dispute in respect of that appeal. This is an important limitation with huge ramifications. The assesses would need to assess whether they should take benefit of The VVS by considering parameters such as quantum of tax, interest and penalty,

merits of the issues involved, same issues in the subsequent years, cost of litigation etc.

If the assessee opts for this scheme, they will only be able to settle such years for which the appeal is pending. However, similar issues in all likelihood will come up in future as well and entail unnecessary litigation in subsequent years.

### **Exceptions**

Section 9 of The VVS provides many exceptions to the scheme. The VVS is not applicable to the following:

1. Tax Arrear in respect of assessments made under section 153A or section 153C which relates to search;
2. Tax Arrear in respect of assessment year for which prosecution has been instituted;
3. Tax Arrear in respect of undisclosed income from a source outside India or an undisclosed asset located outside India;
4. Tax Arrear in respect of assessment or reassessment made on the basis of agreement referred to u/s 90 or 90A;
5. Tax Arrear in respect of appeal before the CIT(A) in respect of which notice of enhancement u/s 251 has been issued;
6. And to certain categories of persons who are under detention order, prosecution order etc under various different acts.

### **Closing Remarks**

It is an overall very good initiative in the right spirit and right direction. However, a lot of clarifications would need to come in from the Government on many unanswered points in the Scheme. Also considering that a very short duration has been provided for availing the benefits of the scheme of dispute resolution, the taxpayers desirous of opting for this will need to undertake a feasibility exercise on an immediate basis.