

Direct Tax Vivad se Vishwas (Legacy Dispute Resolution Scheme)

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Tax disputes consume 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.

The Finance Minister, Smt. Nirmala Sitharaman, in her budget speech, has proposed to bring a scheme similar to the *Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019* to reduce the litigation in the direct taxes. This will not only benefit the exchequer to recover the blocked revenue but also the taxpayers to save time, energy and resources to be spent on unwanted litigations.

The Finance Minister has introduced the *Direct Tax Vivad se Vishwas Bill, 2020* ('the Scheme') in the Lok Sabha on 05-02-2020 for dispute resolution related to direct taxes. As per media report, numerous of changes are made in the bill.

The highlights of the revised bill are discussed in the below paragraphs:

1) Who can avail the benefit under this scheme?

A taxpayer can avail of the benefit under the scheme in respect of Income-tax appeals pending before the appellate forum as on 31-01-2020. These appeals could be filed either by the taxpayer or by the Income-tax authority.

The following person shall also be eligible for the benefit under this scheme:

- a) A person in whose case writ/special leave petition is pending before the High Court or the Supreme Court.
- b) A person in whose case, an order has been passed by the Assessing Officer or appellate forum and time limit for filing an appeal against such order has not expired on or before 31-01-2020.
- c) A person who has filed an objection with the Dispute Resolution Panel (DRP) under section 144C and no direction has been issued by DRP on or before 31-01-2020.
- d) A person against whom directions have been issued by DRP on or before 31-01-2020 but the Assessing Officer has not yet passed an assessment order in pursuance of such directions.
- e) A person who has filed an application for revision under section 264 and such application is pending on or before 31-01-2020.

2) How much tax is payable under the scheme?

The scheme provides two schedules for the payment of taxes:

| <i>Type of case</i> | <i>Amount payable up to 31-03-2020</i> | <i>Amount payable on or after 01-04-2020</i> |
|---|---|--|
| <i>Cases relating to disputed tax, interest chargeable and penalty on such disputed tax</i> | | |
| If an appeal is filed by a taxpayer, in whose case search and seizure have occurred, and the disputed tax does not exceed Rs. 5 crores. | Amount of disputed tax <i>plus</i> 25% of disputed tax. | Amount of disputed tax <i>plus</i> 35% of disputed tax |
| If an appeal is filed by a taxpayer, in any other case. | Amount of disputed tax. | Amount of disputed tax <i>plus</i> 10% of disputed tax |
| If an appeal is filed by the department, in cases where search and seizure have occurred, and the disputed tax does not exceed Rs. 5 crores. | 50% of disputed tax <i>plus</i> 12.5% of disputed tax | 50% of disputed tax <i>plus</i> 17.5% of disputed tax |
| If an appeal is filed by the department, in any other case. | 50% of disputed tax | 50% of disputed tax <i>plus</i> 5% of disputed tax |
| <i>Note: 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.</i> | | |
| <i>Cases relating to disputed interest, penalty and disputed fee</i> | | |
| If an appeal is filed by the taxpayer | 25% of disputed interest, penalty or fee | 30% of disputed interest, penalty or fee |
| If an appeal is filed by the department | 12.5% of disputed interest, penalty or fee | 15% of disputed interest, penalty or fee |

3) What is disputed tax or interest or penalty?

A. 'Disputed Tax' in relation to an assessment year shall have the following meanings:

| <i>Nature of case</i> | <i>Disputed Tax</i> |
|---|---|
| Where appeal, writ petition or special leave petition is pending before the appellate forum on or before 31-01-2020 | Amount of tax (including surcharge and cess but excluding interest) payable if such appeal was to be decided against taxpayer |
| Where appeal, the writ petition has been passed on or before 31-01-2020 and time limit for filing appeal against such order has not expired | Amount of tax (including surcharge and cess but excluding interest) payable by the taxpayer after giving effect to such order |

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| Where objections are pending before the DRP | Amount of tax (including surcharge and cess but excluding interest) payable by the taxpayer if DRP was to confirm variation proposed in the draft order |
| Where DRP issued directions but the Assessing Officer didn't pass an order on or before 31-01-2020 | Amount of tax (including surcharge and cess but excluding interest) would have been payable by taxpayer had the order been passed by the Assessing Officer. |
| Where an application for revision under section 264 filed by the taxpayer is pending | Amount of tax (including surcharge and cess but excluding interest) payable by the taxpayer if the application was to be rejected |
| Where CIT(A) has issued an enhancement notice under section 251 | Amount of tax (including surcharge and cess but excluding interest) payable by the taxpayer in respect of enhancement proposed in additions to amount payable relating to the disputed issue. |
| In cases where disputed tax is related to reduction of MAT/AMT credit or loss or depreciation, the taxpayer has an option either to include amount of tax (including surcharge and cess but excluding interest) related to loss in amount of disputed tax or carry forward the reduced MAT/AMT credit or loss or depreciation, in a manner to be prescribed. | |

B. 'Disputed interest' means any interest determined under the provisions of the Act (not being an interest charged or chargeable on disputed tax) against which appeal has been filed and pending before the appellate forum.

C. 'Disputed penalty' means any penalty determined under the provisions of the Act (not being a penalty levied or leviable on disputed income or disputed tax) against which appeal has been filed and pending before the appellate forum.

D. 'Disputed fee' any fee which is determined as per the provisions of the Act against which appeal has been filed and pending before the appellate forum.

4) How to file the declaration under the scheme?

Declaration under the scheme shall be filed before the designated authority. The relevant form for filing of such declaration shall be notified subsequently.

Upon receiving the declaration, the designated authority shall determine the amount payable by the taxpayer and grant a certificate within 15 days from the date of receipt of the declaration.

5) When the disputed amount has to be paid under the scheme?

The taxpayer shall be required to pay the determined amount within 15 days from the date of receipt of the certificate and also required to intimate the same to the designated authority in the prescribed form.

In case the taxpayer has already made payment before filing of declaration, the excess amount paid by him shall be refunded. However, no interest shall be granted under provisions of section 244A.

In case a taxpayer has filed an appeal or petition before the appellate forum, he is required to withdraw such appeal/petition and furnish proof of such withdrawal along with the intimation of payment. The taxpayer also needs to withdraw the proceedings, if any, initiated by him for arbitration, conciliation or mediation. He is further required to furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrears. Upon receipt of such intimation, the designated authority shall pass an appropriate order.

6) Filing declaration does not amount to conceding tax position

It will be clarified in the bill that where any tax dispute has been settled under this scheme, it shall not be lawful to contend that the Income-tax authority or declarant has agreed in the decision on the disputed issue by settling it under this scheme.

7) What shall be the effect of the scheme on pending appeals?

Once taxpayer files declaration under the scheme, any appeal pending before the ITAT or CIT(A), in respect of the disputed income/disputed interest/disputed penalty/disputed fee, shall be deemed to have been withdrawn from the date on which certificate is issued by the designated authority.

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 an order has been passed by the designated authority or the payment of a sum by the declarant has been made under the scheme.

The declaration made under the scheme shall be presumed not to have been made in the following circumstances:

- a) If any material particulars furnished in the declaration is found to be false at any stage;
- b) Taxpayer violates any of the conditions referred to in the scheme; or
- c) Taxpayer acts in any manner which is not in accordance with the undertaking given by him while filing his declaration.

Once the declaration is presumed not to have been made, all the proceedings and claims which were withdrawn earlier shall be deemed to have been revived.

8) When the benefit of the scheme is not available?

This scheme shall not be available in respect of the following circumstances:

- a) Tax arrears relating to an assessment year in respect of which an assessment has been made

under section 153A or section 153C of the Act (assessment in case of search or seizure). However, the cases, where disputed tax does not exceed Rs. 5 crores, shall be eligible for the benefit of this scheme.

- b) Tax arrears relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of the declaration;
- c) Tax arrears relating to any undisclosed income from a source located outside India or an undisclosed asset located outside India;
- d) Tax arrears relating to assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Act;
- e) 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, if such detention order has been revoked by the Advisory Board or set aside by a court of competent jurisdiction then such a person can file a declaration under the scheme;
- f) Any person in respect of whom prosecution for any offence punishable under the following Acts or such person has been convicted of any such offence:
 - The Indian Penal Code (IPC),
 - 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
- g) Any person against whom enforcement of any civil liability has been instituted on or before the filing of the declaration; or
- h) 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.

It must be noted that only those cases shall be excluded from this scheme where department has launched prosecution under IPC or for enforcement of any civil liability.

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