

Tax Wire



**Direct Tax Vivad se Vishwas
Act, 2020**

30 March, 2020

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CONSULTING

Direct Tax Vivad se Vishwas Act, 2020

Background

The Finance Minister introduced the Direct Tax Vivad se Vishwas Bill, 2020 ('DTVSV' or 'the scheme') in the Parliament on 05-02-2020 for providing resolution of disputed tax and for matters connected therewith and incidental thereto. Post few amendments, currently the DTVSV Act,2020 has been passed. The relevant provisions of this Act is captured in the ensuing paragraphs in brief.

Applicability

The cases that can take benefit of this scheme are as below:

- **Appeals or writ petition or special leave petition** pending before the Commissioner of Income Tax (Appeals) (CIT(A)) or the Income Tax Appellate Tribunal (ITAT) or the High Court or the Supreme Court as on 31-01-2020
- An order is passed by the Assessing Officer (AO) or CIT(A) or ITAT or Writ Petition by the High court and **time limit** for filing any appeal or special leave petition against such order has not expired as on 31-01-2020
- Objection has been filed with the Dispute Resolution Panel (DRP) u/s 144C of the Income Tax Act ('the Act') and **no direction has been issued** by the DRP on or before 31-01-2020.
- Directions has been issued by the DRP and the assessment order has not been passed by the AO on or before 31-01-2020
- An application has been filed for revision u/s 264 of the Act and such application is pending as on 31-01-2020.

Tax Payable and the Due Dates

As per this Act, tax payer is supposed to file a declaration of opting to go under the scheme and is required to pay certain

portion of tax arrears within the due date, 31st March,2020, which is now extended to 30th June, 2020 due to COVID-19 outbreak. The amount payable by the taxpayer is tabulated below:

Sl No	Nature of tax arrear	Amount Payable on or before 30 th June 2020
		After 1 st July 2020 but on or before the last date to be notified by the Government
1	The tax arrear is the aggregate amount of disputed tax, interest chargeable/charged on such disputed tax and penalty leviable/levied on such disputed tax	100% of the disputed tax
		100% of the disputed tax + 10% of the disputed tax (*)
2	The tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure and the disputed tax does not exceed INR 5 crores	Amount of disputed tax + 25% of disputed tax (*)
		Amount of disputed tax + 35% of disputed tax (*)
3	The tax arrear relates to disputed interest or disputed penalty or disputed fee	25% of disputed interest/ disputed penalty/ disputed fee
		35% of disputed interest/ disputed penalty/ disputed fee

4	If the appeal or writ petition or special petition is filed by the income tax authority	50% of the amounts mentioned under sl. No. 1, 2 and 3.
5	If the appellant has already got a decision in his favour and appeal filed is on similar matter for a different year	50% of the amounts mentioned under sl. No. 1, 2 and 3.

(*Note: Provided if 10% or 25% or 35%, as the case may be of the disputed tax exceeds aggregate amount of interest and penalty, such excess shall be ignored)

Procedure

- The taxpayers opting the scheme are required to file the declaration in respect of tax arrear in **Form-1** and an undertaking in **Form-2** waiving his rights to seek any remedy or any claim in relaxation to tax arrear which may otherwise available to him under any law for the time being in force, online as prescribed under Rule 3 of the Direct Tax Vivad Se Vishwas Rules, 2020 on the e-Filing portal of the Income Tax Department.
- These forms 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.
- Upon filing the declaration, any appeal filed before CIT(A) or ITAT stands withdrawn.
- Upon receiving the declaration, the designated authority shall determine the amount payable by the taxpayer and grant a certificate in **Form-3** within 15 days from the date of receipt of the declaration.
- The taxpayer shall be required to pay the determined amount and has to

intimate the same to the designated authority in **Form-4** along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, arbitration, conciliation, mediation or claim filed by the taxpayer. Thereafter the authority shall pass an order in **Form-5** stating that the taxpayer has paid the amount.

- Any amount paid in pursuance of a declaration, shall not be refundable. But if the amount paid before filing the declaration, exceeds the amount that the taxpayer is entitled to pay on opting this scheme, such excess is refundable without any interests.

Advith Comments

It is a very welcome move to have thought of this scheme. This should provide an opportunity to the tax payers to settle some dispute which may have been pending for a very long period of time. Further the approach adopted by the tax authorities to bring out FAQs even before the Act was passed to get wide acceptance of the scheme is also a very positive step.

Another important aspect of the scheme is that a tax payer can go under this scheme for a particular year where the tax demand is lower and on a similar matter for a different year, he can continue the appeal as it has been clarified that opting this scheme does not mean that a particular tax position has been accepted.

It is recommended that taxpayers who wish to buy peace with the department or have cases where there are weak facts in their favour, take the advantage of this scheme and reduce the burden on litigation.

From the Government's end, it could be a good idea to keep the scheme open for a slightly long duration so that maximum tax collection can happen and pressure on appellate forums also reduce.

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