

"THE DIRECT TAX VIVAD SE VISHWAS" ACT

"Vivad Se Vishwas" scheme which was announced in Budget 2020 is now an Act with the assent of the President as on 17th March 2020. It is now called as "The Direct Tax Vivad se Vishwas Act, 2020"

19.03.2020

WHAT IS THE ACT ABOUT?

Under this act, taxpayers whose tax demands are stuck in dispute in multiple forums throughout the Income Tax authorities, have an option to pay due taxes by specified due dates and get a complete waiver of interest and penalty.



WHO CAN APPLY UNDER THE ACT?

All taxpayers whose tax demands are locked in dispute and fall under the definition of appellant can apply under the act.



EXCLUSIONS FROM THE ACT:

The search cases where disputed tax is more than Rs. 5Cr, prosecution cases involving undisclosed foreign income/ assets and the cases completed on the basis of information received from other countries would not be covered under the act.

Further, below mentioned cases covered under respective laws would continue to remain out of the scope of the act:

1. Benami law
2. PMLA, Narcotic Drugs and Psychotropic Substances Act
3. Special Courts Act, the Unlawful Activities (Prevention) Act, 1967
4. The Prevention of Corruption Act, 1988
5. To any person in respect of whom prosecution has been initiated by an Income-tax authority for any offence punishable under the provisions of the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, on or before the filing of the declaration or such person.

IMMUNITY TO APPELLANT

Once a dispute is resolved, the designated authority cannot levy interest or penalty in relation to that dispute. Further, no appellate forum can make a decision in relation to the matter of dispute once it is resolved. Such matters cannot be reopened in any proceeding under any law, including the IT Act.

However, no other benefit or concession in any other proceedings under any other law in India would be given to the appellant other than those in relation to which the declaration is made.



REVIVAL OF DISPUTES

The declaration filed by an appellant will become invalid if:
(i) its particulars are found to be false
(ii) he violates any of the conditions referred to in the IT Act, or
(iii) he seeks any remedy or claim in relation to that dispute.

Consequently, all proceedings and claims withdrawn based on the declaration will be deemed to have been revived.

The Declarant has to file the declaration before the designated authority in such form and manner as may be prescribed.

TIME AND MANNER OF PAYMENT

1

Filing of Declaration before designated authority in prescribed form, withdrawal of appeals and providing undertaking to designated authority.

2

Designated authority pass order and to grant certificate within 15 days which would specify tax arrears and amount payable.

3

Declarant to pay the amount within 15 days of receipt of certificate mentioned in previous step and intimate the authorities.

IMPACT OF DECLARATION

Making a declaration under this Act 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.



PAYMENT TERMS

PARTICULARS

PAYMENT MADE UPTO
31ST MARCH, 2020

PAYMENT MADE AFTER
1ST APRIL, 2020 BUT ON OR BEFORE THE LAST DATE

In case the appeals are filed by the Taxpayer:

Search cases involving dispute relating to tax, interest, penalty, etc

125% of the disputed tax. Penalty and interest would be waived

135% of disputed tax, penalty and interest would be waived

Other than search cases where dispute involves tax, interest, penalty, etc

100% of the disputed tax, penalty and interest would be waived

110% of disputed tax, penalty and interest would be waived

Where dispute relates to only interest, penalty or levy

25% of disputed interest, penalty or fee – balance 75% would be waived

30% of disputed interest, penalty or fee – balance 70% would be waived

In cases where an appeal or writ or SLP is filed by **the tax authority** on any issue before the appellate forum, the amount payable shall be **50%** of the amount in the above table, calculated on such issue, in a manner to be prescribed.

Furthermore, in case of a taxpayer's appeal, if the taxpayer has already got a decision on any issue in its favour by the appellate authority or the HC and the same has not been reversed by any higher authority or court, the amount payable is **reduced to 50%** of the amount stated above.

REFUND OF EXCESS TAX

Declarant is entitled only for Refund of the amount paid under the Income tax act which is in excess of the amount required to be paid under the VSV Act.

However, such excess amount will be refunded without any interest.



WITHDRAWAL OF APPEAL



The declarant is required to withdraw the appeal after issuance of certificate by designated authority u/s. 5(1) [on determination of tax payable] and furnish the proof of such withdrawal along with the intimation of payment to the designated authority u/s. 5(2).

Important Definitions

1

A person in whose case an order has been passed by the AO, or CIT(A) or ITAT in an appeal, or by HC in a writ petition, on or before the specified date, and the time for filing any appeal or SLP against such order by that person has not expired as on that date.

2

A person in whose case an appeal /writ petition /SLP has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date.

3

A person who has filed his objections before the DRP u/s 144C and such DRP has not issued any direction on or before the specified date.

4

A person in whose case the DRP has issued direction u/s 144C(5) but AO has not passed any order u/s 144C (13).

5

A person who has filed an application for revision u/s 264 and such application is pending as on the specified date.

6

"Appellate forums" are the Supreme Court, the High Courts, the Income Tax Appellate Tribunals, and the Commissioner (Appeals).

7

"Designated authority" means an officer not below the rank of Commissioner of IT notified by the Principal Chief Commissioner.

8

"Disputed fee" means the fee determined under the provision of income tax in respect of which appeal has been filed by the applicant.

9

"Disputed income" in relation to an assessment year means the whole or so much of the total income as is relatable to disputed tax.

10

"Specified date" means the 31st January, 2020

Appellant

Other definitions

DEFINITION OF "DISPUTED TAX"

CASE TYPE	DISPUTED TAX
Where an order is passed by the assessing officer (AO) and the time limit for appeal has not expired on 31 January 2020	Amount of tax payable as per AO's order
Where appeal/writ/SLP is pending before any appellate forum	Amount of tax that is payable by the appellant if such appeal/writ/SLP was to be decided against him
Where any appeal/writ is decided by the lower authority/HC and time limit for filing appeal/SLP has not expired on 31 January 2020	Amount of tax payable after giving effect to such order
Where objections are pending before DRP as on 31 January 2020	Amount of tax payable if DRP was to confirm variation proposed in the draft order
Where DRP issued directions but AO has not passed the final assessment order on or before 31 January 2020	Amount of tax payable had the order been passed by AO
Where an application for revision under Section 264 filed by the taxpayer is pending as on 31 January 2020	Amount of tax payable if the application was to be rejected

Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

It has been further clarified that where dispute relates to reduction of tax credit under section 115JAA or 115D, the appellant shall have the following two options:

- To include the amount of tax related to such credit or loss or depreciation in the amount of disputed tax
- To carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed..

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