

The Direct Tax Vivad se Vishwas Act, 2020

(Including FAQ's issued by CBDT vide Circular No. 7/2020)
[As Passed by Lok Sabha on 04.03.2020]

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Introduction

- ❑ This Act was proposed by our Finance Minister Mrs. Nirmala Sitaraman during her Budget Speech 2020-2021 referred as “**Vivad se Vishwas**”. This Act follows the Sabka Vishwas Scheme which was brought in to reduce the litigation in Indirect tax cases. (It will come into force on the date it receive the assent of the President)
- ❑ An opportunity is provided to Appellant to get relief from vexatious litigation process.
- ❑ Under this Act Appellant is required to pay only the amount of the disputed tax and complete waiver of interest & penalty and if appeal is related to interest and penalty then Appellant is only required to pay 25% of such interest or penalty provided that he pays by 31st March 2020. This Act also covers appeals made against the tax determined on the defaults in respect of TDS or TCS.

Cases covered under this Act

1. This Act is applicable to the **Appeals/ Writ Petition/ SLP filed by assessee or income tax authority** which are pending on 31st January 2020 before **appellate forum***

***Appellate Forum means-**

- i. Supreme Court
- ii. High Court
- iii. Income Tax Tribunal
- iv. The Commissioner (Appeals)

Appeal which was filed before HC and still pending for admission as on 31.01.2020 is also included above. [FAQ No. – 24]

2. Order has been passed by AO or appellate forum on or before 31.01.2020 and the time for filing appeal/SLP has not expired on 31.01.2020. further assessee is eligible even in case where he has not filed appeal in actual. [FAQ No. – 20 & 23]
3. Case pending before Dispute Resolution Panel (DRP) on 31.01.2020.
4. Cases where DRP issued direction on or before 31.01.2020 but no order has been passed upto 31.01.2020.

Cases covered under this Act

5. Cases where assessee filed revision u/s 264 of the Act on or before 31.01.2020.
6. Search cases where the disputed tax is upto Rs. 5 Crore – The limit of of Rs. 5 crore will be computed year wise. **[Search cases also include the assessment year for which assessment is completed u/s 143(3) / 144] [FAQ No. - 6]**
7. Where case is pending before arbitration even if no appeal is filed in respect of same matter. [FAQ No. – 2]
8. Order has been passed by appellant authority and set aside an order to the file of AO for the giving proper opportunity or to carry out fresh examination, then such assessee will be covered under this Act. However this Act will not covered the case where the original assessment has been cancelled with a direction to frame fresh assessment order. [FAQ No. – 7 & 26]

Cases not covered under this Act (Section 9)

The Act shall not apply in following cases-

- A. In respect of the tax arrear-
 - i. Search cases if disputed tax is more than 5 crore.
 - ii. Relating to an assessment year in respect of which **prosecution has been instituted** on or before the date of filing of declaration
 - iii. Relating to any **undisclosed income from a source** located outside India or **undisclosed asset located outside India.**
 - iv. Relating to an **assessment or reassessment made on the basis of information** received under an agreement referred to in **section 90 or section 90A** of the Income-tax Act, if it relates to any tax arrear.
- B. 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.
- C. Any person in respect of **whom prosecution has been instituted on or before filing of declaration u/s 4 of the Act** or such person has convicted of any such offence under the provisions of the following Acts:
 - i. The Unlawful Activities (Prevention) Act, 1967
 - ii. The Narcotic Drugs and Psychotropic Substances Act, 1985
 - iii. the Prevention of Corruption Act, 1988
 - iv. The Prevention of Money Laundering Act, 2002
 - v. The Prohibition of Benami Property Transactions Act, 1988

D. Any person in respect of whom prosecution has been initiated by an Income – tax authority for any offence punishable under the provision of 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 filing of declaration u/s 4 of the Act or such person has convicted of any such offence consequent to the prosecution initiated by an Income –tax authority.

Interpretation of clause C & D

- ❑ However where only notice for initiation of prosecution has been issued with reference to tax arrears, the taxpayer has a choice to go for Vivad se Vishwas. [FAQ No. – 22]
- ❑ Further as per the provision of section 9 it is evident that if prosecution has been launched against any person on or before 31.01.2020, then such person will become ineligible for all the matters and for all the assessment years.
- ❑ The word instituted is not defined under any Act. However, Hon'ble Supreme Court in the case of Jamuna Singh & Others vs Bhadai Sah 1964 AIR 154, defined the word instituted as follows “The Code does not contain any definition of the words “institution of a case”. It is clear however and indeed not disputed, that case can be said to be instituted in a court only when the court only when the court takes cognizance of the offence alleged therein. Section 190(1) of the Code of Criminal Procedure contains the provision for cognizance of offences by Magistrates.

E. 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.

F. Any dispute is pending before AAR will not covered under this Act. However, if any writ is pending before HC then such case will be covered by this Act. [FAQ No. – 3]

Relief Provided under this Act (Section 3) if Appeal/ Writ is filed by Assessee

S. No.	Nature of the Tax Arrear	Amount Payable as on or before 31.03.2020	Amount payable on or after 1.4.2020 upto the last date (to be notified)
1	where the tax arrear is amount of the aggregate of the amount of disputed tax, interest chargeable or charged on such disputed tax.	100% of disputed tax (in search cases 125%* of disputed tax)	110%* of disputed tax (in search cases 135%* of tax)
2	where the tax arrear is relates to disputed Interest or disputed Penalty or Disputed Fees.	25 % of the Disputed Interest or Disputed Penalty or Disputed Fees.	30 % of the Disputed interest or disputed penalty or disputed Fees.

*Where the 10% or 25% or 35% of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.

Relief Provided under this Act (Section 3)

if Appeal/ Writ is filed by Department or the Department has lost on an issue

S. No.	Nature of the Tax Arrear	Amount Payable as on or before 31.03.2020	Amount payable on or after 1.4.2020 upto last date (to be notified)
1	where the tax arrear is amount of the aggregate of the amount of disputed tax, interest chargeable or charged on such disputed tax.	50% of disputed tax (in search cases 62.5% of disputed tax)	55% *of disputed tax (in search cases 67.5% of tax)
2	where the tax arrear is relates to disputed Interest or disputed Penalty or Disputed Fees.	12.5 % of the Disputed Interest or Disputed Penalty or Disputed Fees.	15 % of the Disputed interest or disputed penalty or disputed Fees.

- **Refund of Excess Amount:** If the amount paid by the taxpayer before filing declaration exceeds the amount payable under the Act, he shall be eligible for refund of such excess amount w/o interest u/s 244A [FAQ No. 5]. However any amount paid in pursuance to this Act shall not be refundable under any circumstances.
- **Credit for taxes paid** against the disputed tax before filing declaration shall be available to the declarant [FAQ No. – 29]

1. Provisions of Section 3 overrides the provision contained in the Income-tax Act, 1961 or any other law for the time being in force.
2. **Tax Arrear:** Tax Arrears means the aggregate amount of **Disputed Tax**, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax or **Disputed Interest**, or **Disputed Penalty** or **Disputed Fee** as determined under the provisions of the Income-tax Act;
3. **Disputed Interest:** "disputed interest" means the interest determined in any case under the provisions of the Income-tax Act, 1961, where:
 - i. Such interest is not charged or chargeable on disputed tax.
 - ii. An appeal has been filed by the appellant in respect of such interest. However, in a case where assessee has filed waiver application instead of appeal then such case is not covered under this Act [FAQ No. - 13]
4. **Disputed Penalty:** "disputed penalty" means the penalty determined in any case under the provisions of the Income-tax Act, 1961, where—
 - i. Such penalty is not levied or leviable in respect of disputed income or disputed tax, as the case may be.
 - ii. An appeal has been filed by the appellant in respect of such penalty.

5. **Disputed Tax:** “Disputed tax” in relation to an assessment year, means income tax including surcharge and cess, as computed hereunder—
- a. In case where **Appeal/ Writ/ SLP** is **pending before appellate forum** as **on 31.01.2020**, the amount of tax if such appeal/ writ/ SLP is decided against assessee shall be the amount of Disputed Tax.
 - b. In case where **order is passed** in an **Appeal/ Writ** by appellate forum **on or before 31.01.2020** and time of filing the **Appeal/ SLP has not expired on that date**, **the amount of tax payable after giving the effect to the order passed shall be the amount of disputed tax.**
 - c. In case where **assessment order has passed** by AO on or before 31.01.2020 and time for filing the appeal has not expired as on that date, **the amount of tax payable in accordance with such order shall be the amount of Disputed Tax.**
 - d. In case where **objection is pending before DRP as on 31.01.2020**, the **amount of tax payable if DRP confirm the variation** proposed in the draft order shall be the amount of Disputed Tax.
 - e. In case where **direction has issued by DRP but order is not passed by AO**, then the **amount of tax payable as per the order to be passed** shall be the amount of Disputed Tax.
 - f. In case where application is pending u/s 264 as on 31.01.2020, the amount of tax payable if such application is not accepted shall be the amount of Tax Payable.

Provided that:- In case where CIT(A) has issued notice of enhancement u/s 251 on or before 31.01.2020, the **disputed tax shall be increased by the amount of tax pertaining to issue for which notice of enhancement has been issued.**

Provided Further that:- In a case where the dispute in relation to reduction of tax credit u/s 115JAA or 115D or any loss or depreciation computed thereunder, the **appellant have an option** either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax or to carry forward the reduced tax credit or loss or depreciation in such manner as may be prescribe.

6. **Disputed Fee:** “Disputed Fee” means the fee determined under the provisions of the Income Tax Act, 1961 in respect of which appeal has been filed by the appellant.
7. **Disputed Income:** “Disputed Income” in relation to an assessment year means the whole or so much of the total income as is relatable to disputed tax.

Procedure to be Followed (Section 4 & 5)

1. A **Declaration** shall be filled to the **Designated authority** by the **Declarant** in such a form and verified in such a manner as prescribed by the Central Government ,by notification in official Gazette.(These rules to be notified) [Section 4(1) of the Act].
 - i. **Declaration:** “Declaration” means the declaration filed under section 4.
 - ii. **Designated Authority:** “Designated authority” means an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner for the purposes of this Act.
 - iii. **Declarant:** “Declarant” means a person making the declaration under section (4) of the Direct Tax Vivad Se Vishwas Act ,2020;
2. If there are more than one issue involved in the appeal, then taxpayer would be required to file declaration for all issues, he cannot file declaration for some issues and litigate the balance issues. [FAQ No. - 14]

3. The designated authority shall, **within a period of fifteen days from the date of receipt of the declaration**, by order, determine the amount payable by the declarant and grant a certificate to the declarant containing particulars of the tax arrear and the amount payable after such determination, in such form as may be prescribed.[Section 5(1) of the Act]
4. The declarant shall **pay the amount determined within fifteen days of the date of receipt of the certificate** and intimate the details of such payment to the designated authority in the prescribed form and thereupon the designated authority shall pass an order.[Section 5(2) of the Act]
Note: Any amount paid in pursuance of a declaration made u/s 4 shall not be refundable [Section 7 of the Act]
5. Every **order passed** for determining the amount payable shall be **conclusive**.

6. Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India [Section 5(3) of the Act]
7. The designated authority shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrears [Section 6 of the Bill]
8. Any appeal pending before the ITAT or Commissioner (Appeals), in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrear shall be deemed to have been withdrawn from the date on which certificate under section 5(1) is issued by the designated Authority.

Condition for filling Declaration (Section 4)

- A. If any appeal is pending before the appellate forum or any writ petition before the High Court or the Supreme Court, then declarant shall withdraw such appeal or writ petition with the leave of the Court wherever required after issuance of certificate u/s 5(1) of the Bill and furnish proof of such withdrawal along with the declaration u/s 5(2) of the Bill. [Section 4(3) of the Bill]
- B. If declarant has filed any proceeding for arbitration, conciliation or mediation or has given any notice, he shall withdraw the claim after issuance of certificate u/s 5(1) of the Bill and furnish proof of such withdrawal along with the declaration u/s 5(2) of the Bill. [Section 4(4) of the Bill]
- C. If any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India is initiated by the Declarant, then he shall withdraw the claim and furnish proof thereof along with declaration.

D. The declarant shall furnish an **undertaking** along with Declaration waiving of his right, to seek any remedy or any claim in relation to the tax arrear which may otherwise be available to him under any law for the time being in force, under statute or under any agreement entered into by India with any country or territory outside India whether for protection of investment or otherwise.

The Form of the undertaking will be notified by Central Government.

Declaration shall be deemed to be invalid– Section 4(6)

The declaration under section 4(1) shall be **presumed never to have been made** if,—

- a) Any material particular furnished in the declaration is found to be false at any stage.
- b) The declarant violates any of the conditions referred to in this Act.
- c) The declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section (5),

In such cases, **all the proceedings and claims which were withdrawn** under section 4 and all the consequences under the Income-tax Act against the declarant **shall be deemed to have been revived**.

Power of CBDT (Section 10)

1. The Central Board of Direct Taxes may, from time to time, **issue such directions or orders to the income-tax authorities**, as it may deem fit:
Provided that **no direction or order** shall be issued so as to require any **designated authority to dispose of a particular case in a particular manner**.
2. Without prejudice to the generality of the foregoing power, the said Board may, if it **considers necessary or expedient** so to do, for the purpose of this Act, including **collection of revenue**, issue from time to time, **general or special orders** in respect of any class of cases, setting forth **directions or instructions** as to the **guidelines, principles or procedures to be followed by the authorities** in any work relating to this Act, including collection of revenue and issue such order, if the Board is of the opinion that **it is necessary in the public interest to do so**.

Power of Central Govt

Power to Remove Difficulties (Section 11)

1. If any difficulty arises in giving effect to the provisions of this Act , the Central Government may, by order,(not inconsistent with the provisions of this Act) , remove the difficulty.

Provided that no order shall be made after the expiry of a period of two years from the date on which the provisions of this Act come into force.

2. Every order made u/s 11 shall be laid before each House of Parliament.

Power to Make Rules (Section 12)

1. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

2. Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - a) The form in which a declaration may be made, and the manner of its verification u/s 4.
 - b) The form and manner in which declarant shall furnish undertaking u/s 4(5).
 - c) The form in which certificate shall be granted u/s 5(1).
 - d) The form in which payment shall be intimated u/s 5(2).
 - e) Determination of disputed tax including the manner of set-off in respect of brought forward or carry forward of tax credit under section 115JAA or section 115JD of the Income-tax Act or set-off in respect of brought forward or carry forward of loss or allowance of depreciation under the provisions of the Income-tax Act.
 - f) The manner of calculating the amount payable under this Act.
 - g) Any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.
3. Every rule made by the Central Government shall be laid before each House of Parliament. If both the houses agree in making any modification or agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Some Important FAQ's Issued by CBDT

FAQ No. – 19 The assessment order u/s 143(3) of the Act was passed in the case of an assessee for the assessment year 2015-16. The said assessment order is pending with ITAT. Subsequently another order u/s 147/143(3) was passed for the same assessment year and that is pending with CIT(A). Could both or one of the orders be settled under Vivad se Vishwas?

Answer: The appellant in this case has an option to settle either of the two appeals or both appeals for the same assessment year. If he decides to settle both appeals then he has to file only one declaration form. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals.

FAQ No. – 25 In a case appeal or arbitration is pending on the specified date, but a rectification is also pending with the AO which if accepted will reduce the total assessed income. Will the calculation of disputed tax be calculated on rectified total assessed income?

Answer: The rectification order passed by the AO may have an impact on determination of disputed tax, if there is reduction or increase in the income and tax liability of the assessee as a result of rectification. The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any

FAQ No. – 30 Where assessee settles TDS appeal or withdraws arbitration (against order u/s 201) as deductor of TDS, will credit of such tax be allowed to deductee?

Answer: In such cases, the deductee shall be allowed to claim credit of taxes in respect of which the deductor has availed of dispute resolution under Vivad se Vishwas. However, the credit will be allowed as on the date of settlement of dispute by the deductor and hence the interest as applicable to deductee shall apply.

FAQ No. – 31 Where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas (i.e against order u/s 201), when will he get consequential relief of expenditure allowance under proviso to section 40(a)(i)/(ia)?

Answer: In such cases, the deductor shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)/(ia) in the year in which the tax was required to be deducted

FAQ No. – 35 If there is substantive addition as well as protective addition in the case of same assessee for different assessment year, how will that be covered? Similarly if there is substantive addition in case of one assessee and protective addition on same issue in the case of another assessee, how will that be covered under Vivad se Vishwas?

Answer: If the substantive addition is eligible to be covered under Vivad se Vishwas, then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of the assessee or in the case of another. 22

THANK YOU..!!

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