

The Direct Tax Vivad se Vishwas Bill, 2020

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Introduction

- ❑ This Bill was proposed by our Finance Minister Mrs. Nirmala Sitaraman during her Budget Speech 2020-2021 referred as “**Vivad se Vishwas**”. This scheme 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 Scheme 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 Scheme also covers appeals made against the tax determined on the defaults in respect of TDS or TCS.

Cases covered under this Scheme

1. This Bill is applicable to the **Appeals** which are pending on 31st January 2020 before:-
 - i. Supreme Court
 - ii. High Court
 - iii. Income Tax Tribunal
 - iv. The Commissioner (Appeals)filed by **Appellant**.

Who is Appellant?

“Appellant” means the person or the income-tax authority or both who has filed appeal before the appellate forum and such appeal is pending on the specified date;

Cases not covered under this Scheme (Section 9)

The Scheme shall not apply in following cases-

- A. In respect of the tax arrear-
- i. Relating to the assessment year in respect of which of the **assessment has been made u/s 153A or section 153C** of the Income-tax Act.
Note: In respect of the search cases, last year of block period (i.e. year in which search is conducted) assessment is made u/s 143(3) of the Income Tax Act, now this scheme does not clarify whether assessment made u/s 143(3) in search cases will be covered or not.
 - 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.
 - v. Relating to an **appeal before the CIT(A)** in respect of which **notice of enhancement under section 251** of the Income-tax Act has been issued on or before the **specified date i.e. 31st January 2020.**

- 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 for any offence punishable under the provisions of the following Acts:
- i.** Indian Penal Code
 - ii.** The Unlawful Activities (Prevention) Act, 1967
 - iii.** The Narcotic Drugs and Psychotropic Substances Act, 1985
 - iv.** the Prevention of Corruption Act, 1988
 - v.** The Prevention of Money Laundering Act, 2002
 - vi.** The Prohibition of Benami Property Transactions Act, 1988 or or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts.
- D.** 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.

Relief Provided under this Bill (Section 3)

S. No.	Nature of the Tax Arrear	Amount Payable as on or before 31.03.2020	Amount payable on or after 1.4.2020 but before the Last Date
1	where the <u>tax arrear</u> is amount of the aggregate of the amount of disputed tax, interest chargeable or charged on such disputed tax.	Amount of the Disputed Tax	The aggregate of the of disputed tax and ten percent of disputed 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 ten percent 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.

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.
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—

- i. Tax determined under the Income-tax Act, 1961 in accordance with the following formula:

$(A - B) + (C - D)$, where

A = An amount of tax on the total income assessed as per the provisions of the Income-tax Act, 1961 (excluding the provisions contained in section 115JB or Section 115JC. **(i.e. the portion of tax amount included in demand raised u/s 156 of the Act)**).

B = An amount of tax that would have been chargeable on total income assessed as per the general provisions been reduced by the amount of income in respect of which appeal has been filed by the appellant. **(i.e. the portion of tax amount included in demand raised u/s 156 of the Act as reduced by the tax on income for which appeal is filed)**).

C = An amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC. **(i.e. Tax calculated on income assessed as per MAT or AMT)**).

D = An amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC of the Income-tax Act, 1961 been reduced by the amount of income respect of which appeal has been filed by the appellant. **(i.e. Tax calculated on income assessed as per MAT or AMT as reduced by the tax on income for which appeal is filed)**

- In a case where the amount of income has reduced the loss or convert the loss into income, then the amount of **disputed tax shall be the amount of tax that would have been chargeable on the income in respect of which appeal has been filed** by the appellant.

- ii. Tax determined under the section 200A or section 201 or subsection (6A) of section 206C or section 206CB of the Income-tax Act, 1961 in respect of which appeal has been filed by the appellant.

- 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.

How this Bill Functions (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).
 - 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. 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.
3. 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.
Note: Any amount paid in pursuance of a declaration made u/s 4 shall not be refundable (Section 7)
4. Every **order passed** for determining the amount payable shall be **conclusive**.

5. Such **order shall not 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.
6. 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)
7. 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 and furnish proof of such withdrawal along with the declaration.

What is Appellate Forum?

“ Appellate Forum” means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);

- B. 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.

- c. 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) 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.

THANK YOU..!!

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