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Direct Tax Disputes Resolution Scheme 2.0 made Effective

INTRODUCTION

Currently, there is high pendency of tax cases before various appellate fora. In the year 2020, the Government introduced a direct tax disputes resolution scheme through the Direct Tax Vivad Se Vishwas Act, 2020 (popularly known as the 'Vivad Se Vishwas scheme']. The intent of the scheme was to reduce direct tax litigation pending before various courts / appellate fora, pursuant to which a significant number of tax disputes were settled.

The aforesaid scheme received an overwhelmingly positive response from the taxpayers. Encouraged by the success of the 2020 scheme, the Government has introduced direct tax disputes resolution scheme known as 'The Direct Tax Vivad Se Vishwas Scheme, 2024' (Scheme) in the Finance (No.2) Bill, 2024 subsequently enacted as Finance (No.2) Act, 2024. The Scheme will be effective from 1 October 2024.

KEY HIGHLIGHTS OF THE SCHEME

1. Scope of the Scheme

The following cases are eligible for resolution under this Scheme:

- a. Cases where an appeal or writ petition or special leave petition (whether filed

by taxpayers or by Income tax department) is pending before the Supreme Court, High Court, Income Tax Appellate Tribunal (ITAT), Commissioner of Income Tax (Appeals) (CIT(A)) or Joint Commissioner of Income Tax (Appeals) (JCIT(A)) as on 22 July 2024;

- b. Cases pending before the Dispute Resolution Panel (DRP) as on 22 July 2024;
- c. Cases where DRP has issued directions and the tax authorities have not passed a final order by 22 July 2024; and
- d. Cases where revision petition has been filed by the taxpayers under section 264 of the Income Tax Act, 1961 (IT Act) and the same is pending as on 22 July 2024.

2. What needs to be paid to avail the Scheme

To avail the benefit under the Scheme, a taxpayer is required to make a declaration on or before the last date (to be notified separately) in a prescribed form (Declaration) before the Designated Authority and is required to pay the following amount:

Nature of Dispute	Amount payable under this Scheme on or before 31 December 2024	Amount payable under this Scheme on or after 1 January 2025 but on or before the 'last date' (to be notified)
Dispute concerns tax, interest and penalty and the appeal has been filed after 31 January 2020	100% of disputed principal tax	110% of disputed principal tax
Dispute concerns tax, interest and penalty and appeal is pending (at the same forum) since 31 January 2020	110% of disputed principal tax	120% of disputed principal tax

Nature of Dispute	Amount payable under this Scheme on or before 31 December 2024	Amount payable under this Scheme on or after 1 January 2025 but on or before the 'last date' (to be notified)
Matter concerns disputed interest, penalty or fee and the appeal has been filed after 31 January 2020	25% of such disputed interest, penalty or fee	30% of such disputed interest, penalty or fee
Matter concerns disputed interest, penalty or fee and the appeal is pending (at the same forum) since 31 January 2020	30% of disputed interest, penalty or fee	35% of disputed interest, penalty or fee
<p>Note: In the following instances, taxpayers would only be required to pay 50% of the disputed tax/disputed interest/disputed penalty/disputed fee:</p> <ul style="list-style-type: none"> ▪ Where appeal is filed by the tax authorities; or ▪ Where the taxpayer has filed an appeal before the JCIT(A)/CIT(A) or objections before DRP and the issue is already decided in favour of the taxpayer in its own case by the ITAT/High Court ▪ Where the taxpayer has filed an appeal before the ITAT and the issue is already decided in favour of the taxpayer in its own case by the High Court 		

3. What immunity is granted upon opting this Scheme

Taxpayers will get immunity from penalty, interest and prosecution in respect of tax arrears for which the Declaration is made and is accepted.

4. What cases are not eligible for the Scheme

- a. Cases relating to assessment years for which assessment orders have been passed pursuant to 'search' action initiated under section 132 or section 132A of the IT Act;
- b. Cases relating to an assessment year in respect of which prosecution case has been instituted on or before the date of filing of Declaration;
- c. Cases relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;
- d. Cases where assessment or reassessment has been made pursuant to 'Exchange of Information' received from foreign jurisdictions;

e. Taxpayers 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 date of filing of Declaration;

f. Taxpayers in respect of whom prosecution for any offence punishable under *inter alia* the Bharatiya Nyaya Sanhita, 2023 (initiated by Income-tax authorities); the Prevention of Money Laundering Act, 2002; the Prohibition of Benami Property Transactions Act, 1988, etc has been instituted / initiated on or before the filing of Declaration or the taxpayers who have been convicted of any such offence; and

g. Taxpayers notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the date of filing of Declaration.

5. Time and manner of tax payment

- Designated Authority will pass order (Order) within 15 days from the date of receipt of a Declaration

determining the amount payable by the taxpayer.

- Taxpayer needs to pay the sum determined in the Order within 15 days of its receipt. Thereafter, Designated Authority will pass an order acknowledging payment of tax / interest / penalty, as the case may be.

6. Some other relevant aspects

- Any amount paid under this Scheme will not be refundable. Taxpayers will, however, be entitled to refund of excess tax paid under the IT Act in respect of tax arrears which exceed the amount of disputed principal tax / disputed interest, penalty or fee, as the case may be, computed under the Scheme. However, no interest will be paid by the Government on such excess tax payment.
- Once the Declaration is accepted, the Taxpayers would be required to withdraw their appeals or writ petitions and furnish proof of such withdrawal along with intimation of payment to the Designated Authority.

- It has been specifically clarified that a case settled under this Scheme will not be treated as a 'precedent' on other tax proceedings of the taxpayer involving similar issues.

COMMENTS

Tax Litigation not only results in financial costs, but it is also a drain on any taxpayer's time, resources and energy. This Scheme is a welcome step towards closure of pending tax disputes. Taxpayers opting for this Scheme will be given immunity from penalty, prosecution, etc. Taxpayers should assess / evaluate whether they would like to consider the Scheme depending on the merits of their pending disputes and other relevant considerations. Declarations made on or after 1 January 2025 will require payment of additional amounts (as mentioned in table above) and thus taxpayers who wish to opt for this Scheme should consider filing a Declaration by 31 December 2024 to avoid having to pay additional amounts which would be applicable after 31 December 2024.

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