

Direct Tax Vivad se Vishwas Act, 2020

By CA Mehul Shah
Partner
Rasesh Shah and Co

Website : www.rscindia.in
Email : mehul@raseshca.com
Contact Number : 9723459572
Judgements support from itatorders.in Team

Introduction to the Scheme



In recent time, Government has taken several measures to reduce tax litigations. In Finance Act (No. 2) of 2019, a dispute resolution cum amnesty scheme called “the Sabka Vishwas Legacy Dispute Resolution Scheme, 2019” was introduced for settlement of legacy cases of Central Excise and Service Tax. In line with scheme for settlement of Indirect Tax Disputes, in Union Budget 2020, a similar scheme to settle disputes in Direct Taxes was introduced and accordingly “The Direct Tax Vivad se Vishwas Bill, 2020” was passed by Lok Sabha on 04.03.2020.

Objectives of the scheme



JUSTICE AND LAW

Reduce time and efforts spent over long drawn litigation

(4,83,000 cases pending as on 30.11.2019)



TAX

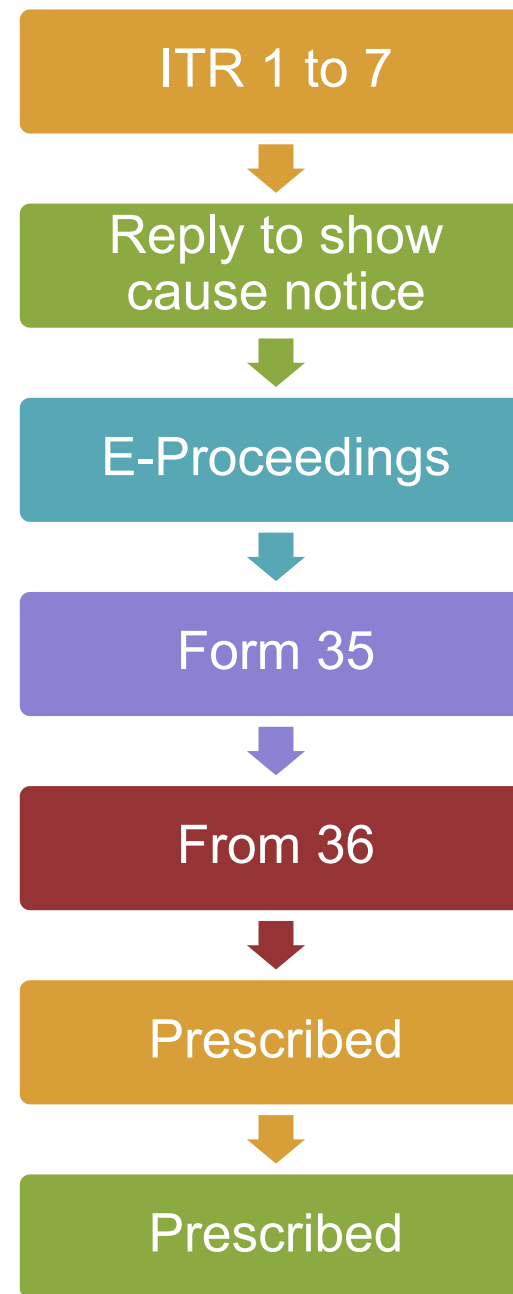
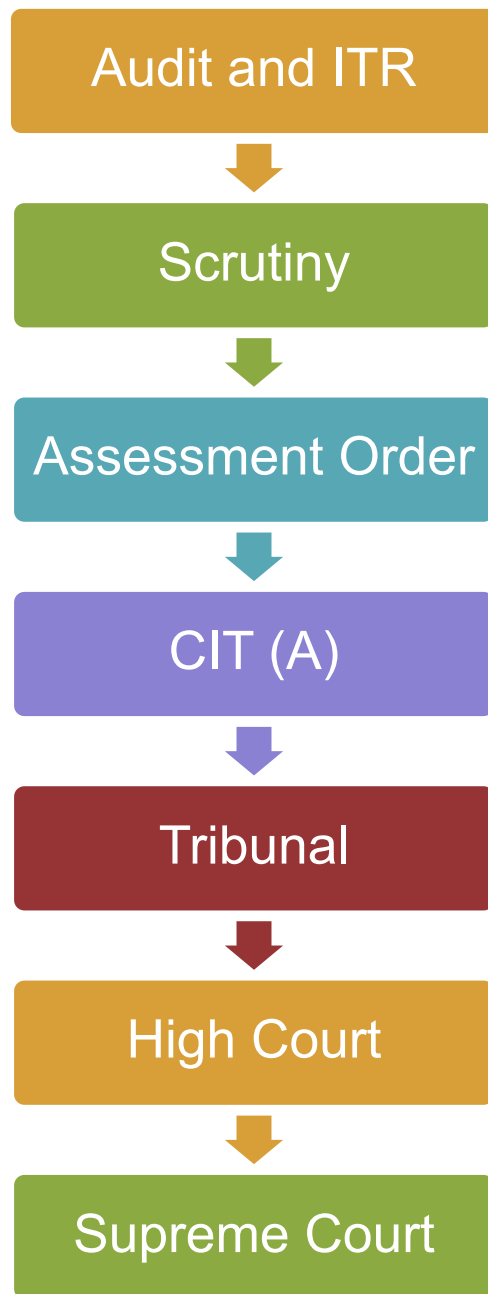
Facilitate tax collection by the government stuck under litigation.

(9.32 lakh Crores outstanding tax dues as on. 30.11.2019)

Introduction to the Scheme

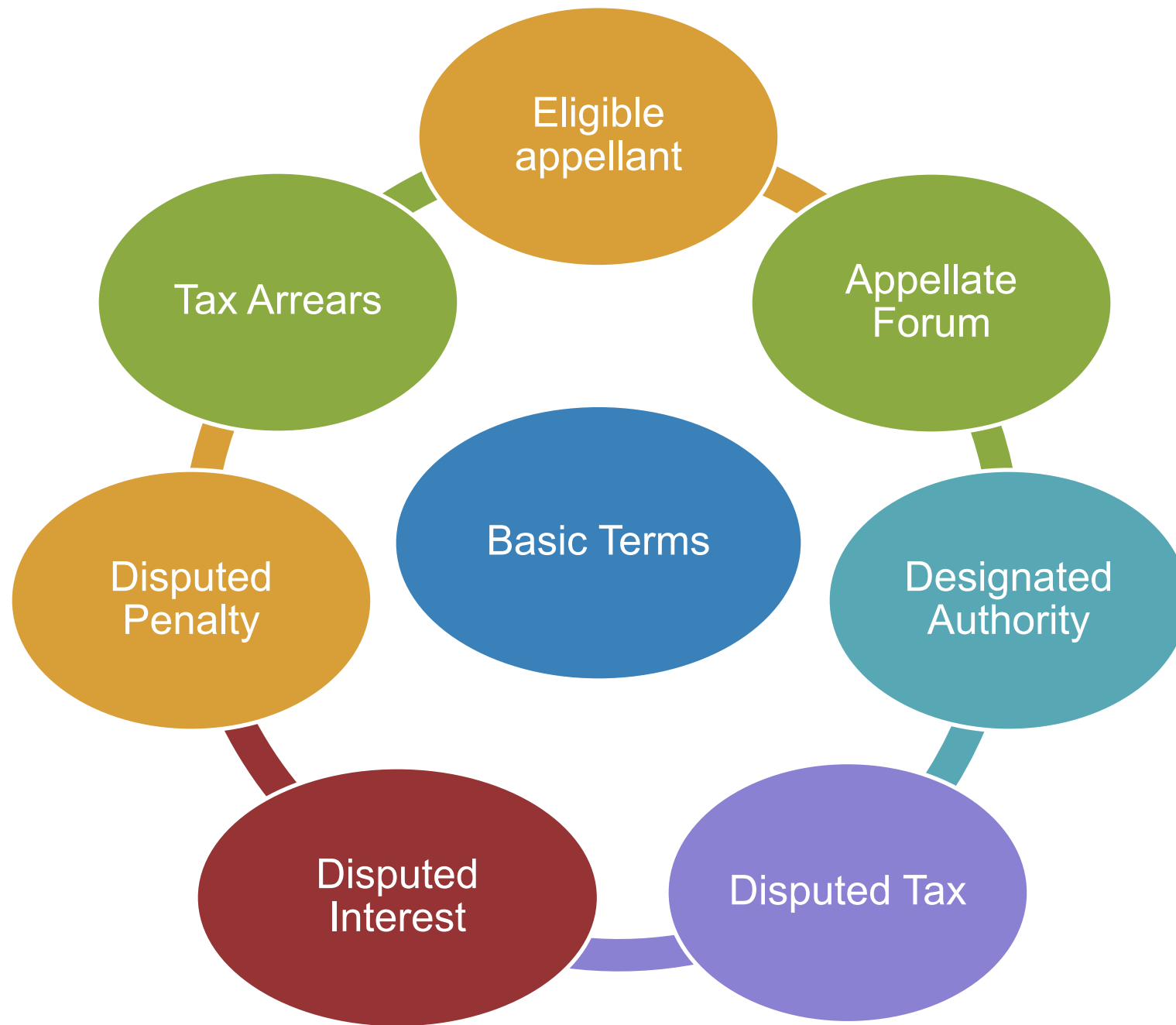


The Act empowers the Central Government to notify the Rules in order to carry out its provisions. In the exercise of such power, the Rules were notified on 18 March 2020.



Life Cycle
of a
taxpayers
year

#VSV



Eligible Person under VSV Scheme 2020

				
Any person in whose case Appeal/Writ/SLP filed by him/revenue/both is pending as on specified date before any appellate forum.	Any person in whose case an order has been passed by AO/CIT(A)/ITAT/HC on or before the specified date and time for filing Appeal/SLP has not expired.	Any person who has filed objection before DRP u/s. 144C of I.T. Act and DRP has not issued any direction on or before the specified date.	Any person in whose case DRP has issued direction u/s. 144C(5) of the I.T. Act and no order has been passed by AO u/s. 144C(13) of the I.T. Act on or before the specified date.	Any person who has filed an application for revision u/s. 264 of the I.T. Act and such application is pending as on the specified date.

Amount payable by Declarant



<u>Sl. No.</u>	<u>Nature of Tax Arrear</u>	<u>Amount Payable</u>
A.	Disputed Tax + Interest on Disputed Tax + Penalty on Disputed Tax levied or leviable	Disputed Tax
B.	Disputed Tax + Penalty / Interest in any assessment on the basis of search u/s. 132 or u/s. 132A of I.T. Act. (Subject to the condition that Disputed Tax does not exceed Rs. 5 crores)	125% of Disputed Tax (Subject to Aggregate of Tax Arrear)
C.	Disputed Interest / Disputed Penalty / Disputed Fee	25% of Tax Arrear

Additional Notes

In cases where appeal is filed by revenue the amount payable under the scheme will be 50% of the amount shown in the table.

In the matters where appeal is filed before CIT(A) or ITAT or matter pending before DRP by the appellant on any issue on which he has already got a decision in his favour in any other year from ITAT or High Court and decision of which has not been reversed by higher authorities the amount payable under the scheme will be 50% of the amount shown in the table.

Benefits

Consequent to such declaration and on fulfillment of conditions, all appeals, writs, SLPs, arbitration to be withdrawn

Immunity to be granted from levy of interest, penalty and institution of any proceeding for prosecution for any offence under the Income-tax Act in respect of matters covered in the declaration

Refunds

If a Appellant has already made some payment during the litigation process and it is excess of what he is supposed to pay under the scheme, he is entitled to refund of that extra amount. However, the same would be paid without any interest on it u/s. 244A of the I.T. Act.

Further as per the provisions of VSV Act, 2020, any sum paid under the said act shall not be refundable.



Non – Applicability of VSV Act

In respect of Tax Arrears

Relating to any assessment carried out on the basis of search u/s. 132 or 132 A of I.T. Act, if disputed tax is greater than Rs. 5 Crores

Relating to any assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration

Relating to any undisclosed income from a source located outside India or asset located outside India

Relating to any assessment / reassessment carried out on the basis of information received under an agreement referred to in sec. 90 or 90A of I.T. Act

Non – Applicability of VSV Act

To any person in respect of whom an irrevocable order of detention has been made under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

To any person in respect of whom prosecution

- For any offence punishable under the provisions of the Indian Penal Code; the Unlawful Activities (Prevention) Act; the Narcotic Drugs and Psychotropic Substances Act; the Prevention of Corruption Act; the Prevention of Money Laundering Act and the Prohibition of Benami Property Transaction Act.

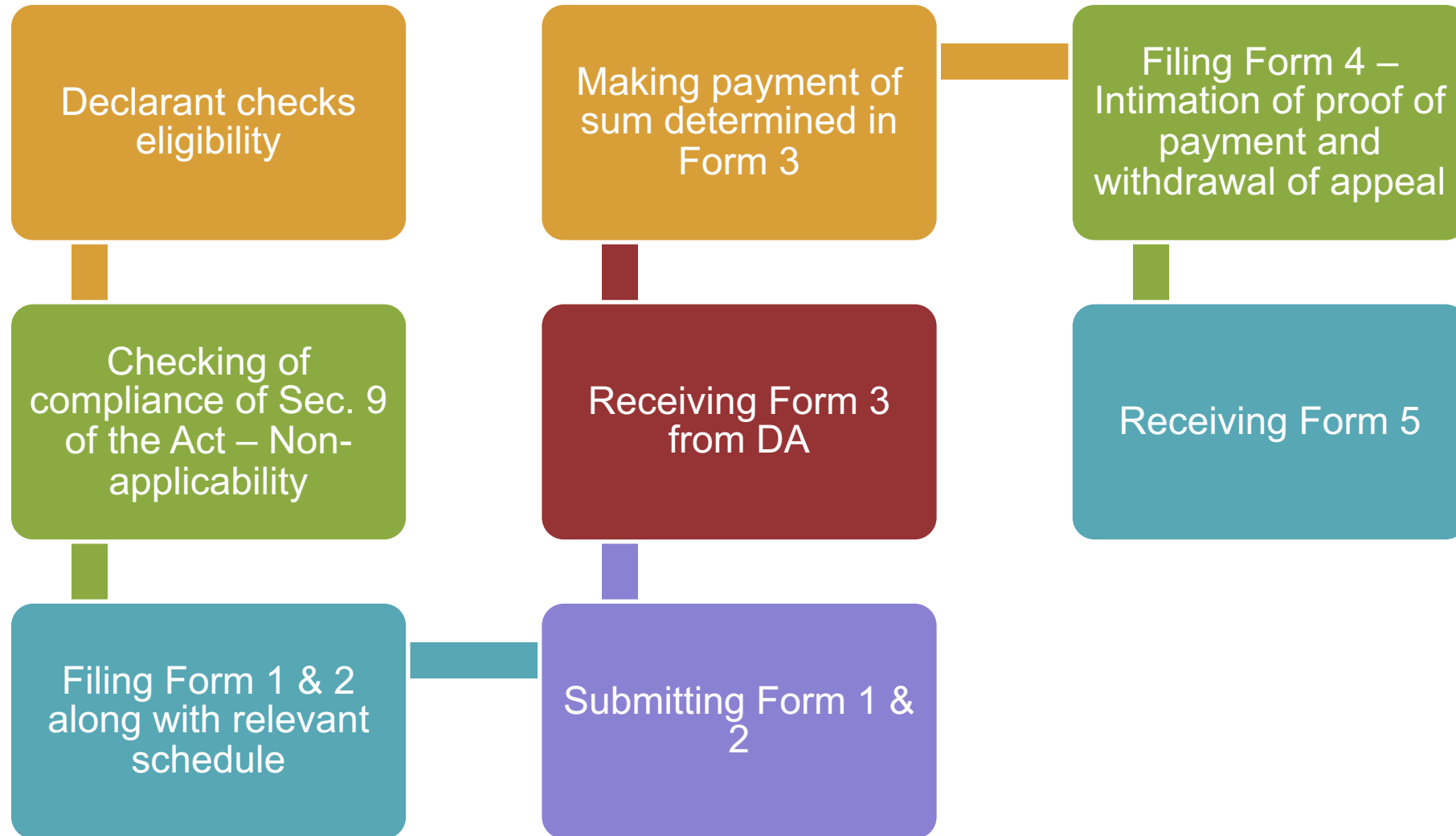
• For the purpose of enforcement of any civil liability
has been instituted on or before the filing of the declaration

Or

Such person has been convicted of any such offence punishable under any of those Acts.

To any person notified for committing an offence in securities as per the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

Process of filing VSV Forms by Declarant



Form No	Content of the Form
Form 1 Form for Declaration	Form 1 is bifurcated into the following parts:
	Part A – General information and information related to eligibility
	Part B – Information related to dispute
	Part C – Information related to tax arrears
	Part D – Information related to amount payable
	Part E – Information related to payments against tax arrears
	Part F – Net amount payable/refundable by the appellant
Form 2 Undertaking	This form relates to the undertaking whereby the taxpayer waives all rights to any remedy/claim related to the matter for which the taxpayer opts to settle his disputes under the VsV Act.

UNBOX TIP 1

- Make Computation by two approaches.
- Tax Payable on returned income excluding interest on returned income
- Take care of Surcharge on Returned income too if after addition the assessed income crosses threshold limit for surcharge.

Open issues - FAQs

Common Issues That May Arise

The Problem -

Addition was made u/s 143(3) on two issues whereas appeal filed only for one addition. Whether interest and penalty be waived for both additions.

The Solution -

Under Vivad se Vishwas, interest and penalty will be waived only in respect of the issue which is disputed in appeal and for which declaration is filed. Hence, for the undisputed issue, the tax, interest and penalty shall be payable,

Common Issues That May Arise

The Problem -

Whether assessee can avail of the Vivad se Vishwas for some of the issues and not accept other issues?

The Solution -

Picking and choosing issues for settlement of an appeal is not allowed. With respect to one order, the appellant must chose to settle all issues and then only he would be eligible to file declaration.

Common Issues That May Arise

The Problem -

Can the benefit of the Vivad se Vishwas be availed, if a search and seizure action by the Income-tax Department has been initiated against a taxpayer?



The Solution –

Case where the tax arrears relate to an assessment made under section 143(3) or section 144 or section 153A or section 153C of the Act on the basis of search initiated under section 132 or section 132A of the Act are excluded if the amount of disputed tax exceeds five crore rupees in that assessment year.

Common Issues That May Arise

The Problem -

Whether 234E and 234F appeals are covered?

The Solution -

If appeal has been filed against imposition of fees under sections 234E or 234F of the Act, the appellant would be eligible to file declaration for disputed fee and amount payable under Vivad se Vishwas shall be 25% of the disputed fee, as the case may be. If the fee imposed under section 234E or 234F pertains to a year in which there is disputed tax, the settlement of disputed tax will not settle the disputed fee. If assessee wants to settle disputed fee, he will need to settle it separately by paying 25% of the disputed fee, as the case may be.

Common Issues That May Arise

The Problem -

If CIT(Appeals) has given an enhancement notice, can the appellant avail the Vivad se Vishwas after including proposed enhanced income in the total assessed income?



The Solution -

The amendment proposed in the Vivad se Vishwas allows the declaration even in cases where CIT (Appeals) has issued enhancement notice on or before 31 st January, 2020. However, the disputed tax in such cases shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued.

Common Issues That May Arise

The Problem -

In a case there is no disputed tax. However, there is appeal for disputed penalty which has been disposed off by CIT (Appeals) on 5th January 2020. Time to file appeal in ITAT against the order of Commissioner(Appeals) is still available but the appeal has not yet been filed. Will such case be eligible to avail the benefit?

The Solution –

Yes, the appellant in this case would also be eligible to avail the benefit of Vivad se Vishwas. In this case, the terms of availing Vivad se Vishwas in case of disputed penalty/interest/fee are similar to terms in case of disputed tax. Thus, if the time to file appeal has not expired as on specified date, the appellant is eligible to avail benefit of Vivad se Vishwas. In this case the appellant should indicate in the declaration form that time limit to file appeal in ITAT has not expired.

Common Issues That May Arise

The Problem -

Where tax determined by DA is not acceptable can appeal be filed against the order of designated authority before ITAT, High Court or Supreme Court?

The Solution -

No. As per clause 4(7), no appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrears mentioned in the declaration in respect of which order is passed by the DA or the payment of sum determined by the DA.

Common Issues That May Arise

The Problem -

Appeals against assessment order and against penalty order are filed separately on same issue. Hence there are separate appeals for both. In such a case how disputed tax to be calculated?

The Solution -

It is clarified that if the appellant has both appeal against assessment order and appeal against penalty relating to same assessment pending for the same assessment year, and he wishes to settle the appeal against assessment order (with penalty appeal automatically covered, he is required to give details of both appeals in one declaration form 1 for that year. However, in the annexure he is required to fill only the schedule relating to disputed tax.

UNBOX TIP 2

- ▶ **Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced.**

UNBOX TIP 2

- ▶ As per sub-rule(1), where the dispute in relation to an assessment year relates to reduction in loss or unabsorbed depreciation to be carried forward under the Income-tax Act, the declarant shall have an option to
 - include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or
 - carry forward the reduced amount of loss or unabsorbed depreciation.

UNBOX TIP 2

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 - include the tax, including surcharge and cess, payable on the amount by which loss or unabsorbed depreciation is reduced in the disputed tax and carry forward the loss or unabsorbed depreciation by ignoring such amount of reduction in loss or unabsorbed depreciation; or
 - carry forward the reduced amount of loss or unabsorbed depreciation.

UNBOX TIP 2

- ▶ **For Example:** XYZ Ltd. has carried forward loss of Rs.100 and addition made by the assessing officer is Rs.70, thus leaving a reduced carried forward loss of Rs.30. If XYZ Ltd. opts to go under VSV scheme, it will have two options:
- ▶ *Option-1-* To pay Tax on Rs.70(Disputed Addition) as per the provisions of the Act and carry forward the loss of Rs.100.
- ▶ *Option-2-* To carry forward the reduced loss i.e. Rs.30. and pay Nil tax under VSV Scheme.

UNBOX TIP 2

- ▶ *The option 2 for not to pay tax under VSV Scheme looks attractive but there is catch here which we should understand. The ITR returns of subsequent years are to be scrutinised. If the assessee has utilised the carry forward loss or unabsorbed depreciation of the relevant assessment year in the next assessment years and set off the same against income of future years, then the assessee shall have to be liable to pay tax to the extent of the loss utilised in subsequent years along with interest. In such scenario, exercising the option 2 shall be a costly affair and it is advisable to work out the cost benefit analysis based on facts and circumstances of each case before arriving at an option.*

Common Issues That May Arise

The Problem -

If assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO. Can he avail the Vivad se Vishwas with respect to such additions?

The Solution -

If an appellate authority has set aside an order (except where assessment is cancelled with a direction that assessment is to be framed de novo) to the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction, the assessee would be eligible to avail Vivad se Vishwas. However, the appellant shall also be required to settle other issues, if any, which have not been set aside in that assessment and in respect of which either appeal is pending or time to file appeal has not expired. In such a case disputed tax shall be the tax (including surcharge and cess) which would have been payable had the addition in respect of which the order was set aside by the appellate authority was to be repeated by the AO. In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner(Appeals).

Common Issues That May Arise

The Problem -

If a writ has been filed against a notice issued under section 148 of the Act and no assessment order has been passed consequent to that section 148 notice, will such case be eligible to file declaration under Vivad se Vishwas?



The Solution -

The assessee would not be eligible for Vivad se Vishwas as there is no determination of income against the said notice.

Common Issues That May Arise

The Problem -

The assessment order under section 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 under section 147/143(3) was passed for the same assessment year and that is pending with CIT (Appeals)? Could both or one of the orders be settled under Vivad se Vishwas?

The Solution -

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.

Common Issues That May Arise

The Problem -

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?

The Solution -

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.

Common Issues That May Arise

The Problem -

DRP has issued directions confirming all the proposed additions in the draft order and the AO has passed the order accordingly. The issues confirmed by DRP include an issue on which the taxpayer has got favourable order from ITAT (not reversed by HC or SC) in an earlier year. The time limit to file appeal in ITAT is still available. The taxpayer is eligible for Vivad se Vishwas treating the situation as taxpayer's deemed appeal in ITAT. In this case how will disputed tax be calculated? Will it be 100% on the issue allowed by ITAT in earlier years or 50%?

The Solution -

In this case, on the issue where the taxpayer has got relief from ITAT in an earlier year (not reversed by He or SC) the disputed tax shall be computed at half of nonnal rate of 100%, 110%, 125% or 135%, as the case maybe.

Common Issues That May Arise

The Problem -

Where there are two appeals filed for an assessment year-- one by the appellant and one by the tax department, whether the appellant can opt for only one appeal? If yes, how would the disputed tax be computed?

The Solution -

The appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both. Declaration form is to be filed assessment year wise i.e. only one declaration for one assessment year. For different assessment years separate declarations have to be filed. So the appellant needs to specify in the declaration form whether he wants to settle his appeal, or department's appeal in his case or both for a particular assessment year. The computation of tax payable would be carried out accordingly.

UNBOX TIP 3

- Use this Lockdown period to scrutinize and sort maximum applicable.
- You may use webportals like www.itatorders.in to find sort cases and also to judge the probability based on past cases to decide whether to opt for #VSV or not.

Common Issues That May Arise

The Problem -

The appellant has settled the dispute under Vivad se Vishwas in an assessment year. Whether it is open for Revenue to take a stand that the additions have been accepted by the appellant and hence he cannot dispute it in future assessment years?

The Solution -

Please refer answer to question no 52. It has been clarified in Explanation to clause 5 that making a declaration under Vivad se Vishwas shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP 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.

Thanks! Any Questions ?

CA MEHUL SHAH

Partner at Rasesh Shah & Co

Phone: 9723459572

Email ID: mehul@raseshca.com