

VIVAD SE VISHWAS SCHEME 2020



Income Tax Department
Central Board of Direct Taxes

BACKGROUND

Direct Tax Vivad se Vishwas Act, 2020 offers a win-win dispute resolution package that benefits the taxpayers as well as the Government. Taxpayers will also be better-off due to savings on account of time and resources, certainty with respect to their tax liability and immunity from penalty and prosecution. Government will benefit from timely generation of revenue and savings on account of time and resources that go into appeals process.

AIMS OF THE SCHEME

- Resolution of Pending Income-tax Disputes & Litigation;
- Savings on account of time and resources; Generate timely revenues for the Government;
- Help taxpayers end their tax disputes with the Department by paying disputed tax and get waiver from payment of interest and penalty. Also get immunity from prosecution.

KEY DATES

- The last date for declaration under the scheme is 31st December, 2020. Make the payment without additional amount by 31st March, 2021.

IMPORTANT TERMS

- (a) "appellant" is a person who fulfils the eligibility criteria (given later in Para) and can file a valid application for declaration under the Scheme.
- (b) "appellate forum" means the Supreme Court or the High Court or the Income Tax Appellate Tribunal or the Commissioner (Appeals);

The proceedings before Settlement Commission and the Authority for Advance Ruling will not form a part of this Scheme.

- (c) "disputed tax"- The determination of disputed tax shall be made as per the table given below:

S.No.	Criterion	Disputed Tax
1.	case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date	amount of tax that is payable if the appeal/writ/SLP were to be decided against the appellant
2.	case where an order in an appeal/writ petition has been passed by the appellate forum and the time for filing appeal or special leave petition against such order has not expired as on the specified date	amount of tax payable by the appellant after giving effect to the order so passed
3.	case where the order has been passed by the Assessing Officer and the time for filing appeal against such order has not expired as on the specified date	amount of tax payable by the appellant in accordance with such order

4.	case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date	amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the adjustments in the draft order
5.	case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date	amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) there of
6.	case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date	amount of tax payable by the appellant if such application for revision was not to be accepted
7.	where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date	Disputed tax as per (1) above plus amount of additional tax pertaining to issues for which notice of enhancement has been issued

(d) "specified date" means the 31st day of January, 2020;

(e) "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;

(f) "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;

(g) "tax arrear" means,—

- (i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or
- (ii) disputed interest; or
- (iii) disputed penalty; or
- (iv) disputed fee,
- (v) Disputed TDS or TCS

as determined under the provisions of the Income-Tax Act;

SALIENT FEATURES OF THE ACT

ELIGIBILITY

A taxpayer is eligible to be covered under this scheme if, for an Assessment Year, he/she has a case in which

- Appeals/writs have been filed on or before 31.01.2020.
- Orders for which time for filing appeal has not expired on 31.01.2020.
- Cases pending before Dispute Resolution Panel (DRP) on 31.01.2020.
- Cases where DRP issued direction on or before 31.01.2020 but no order has been passed.
- Cases where assessee filed revision (Section 264) on or before 31.01.2020 and are pending.
- Search case if the disputed demand is less than Rs. 5 Crore in a year.
- The appeals/writs filed either by taxpayers or the Department.
- Disputes where the payment has already been made are also eligible.
- Cases in Arbitration in India or abroad.

DISPUTES COVERED

All disputes, subject to some exclusion, in relation to the:

- Disputed tax
- Disputed penalty
- Disputed interest
- Disputed Fee
- Disputed TDS or TCS

are covered under the Scheme.

PAYMENT SCHEDULE UNDER THE SCHEME

Payment made on or before	Appeal relates to disputed tax	Appeal relates only to disputed penalty or interest or fee
31 st March, 2021	100% of the disputed tax (125% in search cases)	25% of the disputed penalty or interest or fee
Payment made on or after	Appeal relates to disputed tax	Appeal relates only to disputed penalty or interest or fee
1 st April, 2021 but on or before the last date to be notified	110% of the disputed tax (135% in search cases) such that it does not increase total demand	30% of the disputed penalty or interest or fee
If an issue in taxpayer's pending appeal is already decided in taxpayer's favour by an appellate forum or if Department has filed appeal on an issue, amount payable is 50% of aforesaid amounts.		



AMOUNTS PAYABLE

(Appeals by Assessee)

Nature of tax arrear	If paid till 31.03.2021	If paid after 01.04.2021
Tax Arrears: Income Tax + Interest (Charged or chargeable)+ Penalty (Charged or chargeable) on	100 % of Disputed Tax	110% of Disputed Tax If such 10% of disputed tax exceeds the interest and penalty charged or chargeable then such excess to be ignored.
Disputed Interest, Disputed Penalty Disputed Fee	25 %	30%
Search Cases	125 % of Disputed Tax	135% of Disputed Tax

Appeals by Department

Nature of tax arrear	If paid till 31.03.2021	If paid after 01.04.2021
Disputed Tax	50 % Disputed Tax	55 % of Disputed Tax If such 10% of disputed tax exceeds the interest and penalty charged or chargeable then such excess to be ignored.

Disputed Interest, Disputed Penalty Disputed Fee	12.50 % of disputed (Interest, penalty or fee as the case may be)	15 %
Search Cases	62.50% of Disputed Tax	67.50 % of Disputed Tax

EXCLUSIONS

The taxpayers with cases falling in the categories given below are excluded from the Scheme and cannot file declaration under it:

- (i) Search case, where disputed tax is more than Rs.5 crore in a year.
- (ii) Prosecution case, under the Income-tax Act or IPC filed by the Department
- (iii) Cases relating to undisclosed foreign income and assets
- (iv) Cases completed on the basis of information from foreign countries
- (v) Cases covered under Narcotic Drugs and Psychotropic Substances Act, Special Courts Act, the Unlawful Activities (Prevention) Act 1967, the Prevention of Corruption Act, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, the Prevention of Money Laundering Act 2002, the Prohibition of Benami Property Transactions Act, 2016.

BENEFITS

The Scheme endows a number of benefits on the people who avail it, some of which are as follows:

- Waiver of interest.
- Immunity from penalty.
- Immunity from prosecution.

FILING OF DECLARATION

- The declarant will file the declaration before the designated authority in such form and in such manner verified as prescribed.
- Upon filing of the declaration, the appeal filed by the declarant shall be deemed to have been withdrawn from the date, certificate is issued by the designated authority.
- The declarant shall withdraw such appeal or writ petition with leave of the court.
- The declarant shall withdraw any proceeding or arbitration or conciliation and furnish its proof along with the declaration.
- The declarant shall furnish an undertaking waiving his right to seek or pursue any remedy or claim in relation to the tax arrear covered under the Scheme.

ROLE OF DESIGNATED AUTHORITY

- The scheme defines the “designated authority” to be “an officer not below the rank of a Commissioner of Income Tax notified by the principal Chief Commissioner for the purposes of this Act.”

- The designated authority shall within a period of 15 days from the date of receipt of the declaration, by order determine the amount payable by the declarant.
- He will grant a certificate to the declarant giving details of the tax arrear and amount payable after such determination.
- Once the amount has been paid by the declarant, the designated authority shall pass an order stating that the amount has been paid.
- All such orders shall be conclusive to the matters stated therein.

PAYMENT BY DECLARANT

- The declarant shall pay the amount determined by the designated authority within 15 days of the receipt of the certificate.
- He shall intimate the details of such payment to the designated authority.

WITHDRAWAL OF APPEAL

- Consequent to such declaration and fulfilment of conditions, appeals/ writs/ objections of taxpayers & department in respect of the disputed income, disputed interest or disputed penalty or disputed fee pending before the Commissioner (Appeals), DRP, ITAT, High Court or Supreme Court shall be withdrawn.
- In the case of taxpayer's appeals a certificate to the effect shall be furnished by the taxpayer.



REFUND OF EXCESS AMOUNT

- If the amount paid by taxpayer before filing declaration exceeds the amount payable under the Scheme, the taxpayer would be granted the refund for such excess amount.
- No interest shall be payable to the taxpayer on such refund.

OTHER POINTS

- Filing of declaration will not set any precedence and neither the Department nor the taxpayer can claim in any other proceedings that the taxpayer or the Department has conceded its tax position by settling the dispute.

- The limit of disputed tax of Rs. 5 crore for filing declaration in a search case shall be computed year wise. Hence, in a search case where the aggregate disputed tax for two or more years exceeds Rs 5 crore, a person can file declaration for those years in which the disputed tax does not exceed Rs. 5 Crore.
- If there are more than one issues involved in the appeal, the taxpayer would be required to file declaration for all issues, he cannot file declaration for some issues and litigate the balance issues.
- In a case where the taxpayer has got a favourable decision on an issue at higher forum, he would be required to pay only 50% of disputed tax on that issue even in the cases in which he has filed appeal.
- In case where the Assessing Officer has reduced the returned loss by making addition of income/disallowing expenditure, the taxpayer shall have an option to either pay the notional tax on amount by which the loss has been reduced and carry forward the claimed loss without reduction or by accepting the reduced carry forward of loss without making any payment under the Scheme. Same mechanism would apply for reduction in MAT credit.
- The settling of dispute regarding transfer pricing adjustment would not have any effect on the secondary adjustment, both being independent provisions, and the taxpayer would be required to repatriate fund to India in respect of settled transfer pricing adjustment.
- Once declaration is filed by assessee under Vivad Se Vishwas it can be revised, any number of times before the DA issues a certificate of final tax amount payable under the scheme.
- Please visit the Departmental website **www.incometaxindiaefiling.gov.in** for more details.



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This brochure should not be construed as an exhaustive statement of the law. For details-reference should always be made to the relevant provisions in the Acts and the Rules.

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