



Confederation of Indian Industry
125 Years: 1895-2020

Key highlights of Direct Tax ‘Vivad se Vishwas’ Act 2020

Background

On 1 February 2020, the Finance Minister of India introduced the Vivad se Vishwas (VSV) Scheme in order to resolve pending litigation under the Income Tax Act. The Draft Bill was introduced in the lower house of parliament on 5 February 2020. The VSV Scheme provides a one-time opportunity to taxpayers to settle tax disputes by making an application in the prescribed form to the prescribed authority and by paying the prescribed amount on or before 31 March 2020. A declaration can also be made post 31 March 2020, but before a specified date (yet to be notified) by paying a higher amount.

Subsequently, on 12 February 2020, the union cabinet of India granted its approval to make amendments to the Draft Bill in order to address certain concerns raised by the stakeholders. The ‘Direct Tax Vivad se Vishwas Act, 2020 has been passed by the Parliament and has received presidential assent on 17th March, 2020 and will remain in force till the date to be notified, which is expected to be 30 June 2020.

Amendments

Expanded scope of eligibility to make a declaration in the VSV Scheme

The Draft Bill provided that a declaration under the VSV Scheme can be made by a taxpayer in respect of appeals which are pending before the First Appellate Authority (FAA), High Court (HC) or Supreme Court (SC) as on 31 January 2020 or a taxpayer who has initiated any proceedings for arbitration, conciliation or mediation before 31 January 2020. The appeals or writs filed by the taxpayer, as well as the tax department, are eligible

to be settled under the VSV Scheme. However, appeals pertaining to cases where assessment has been made pursuant to search and seizure, and in cases where an enhancement notice has been issued by the Commissioner (Appeals), were not eligible for being settled under the VSV Scheme.

As per the Act, the VSV Scheme will now cover the following additional cases or proceedings which are pending as on 31 January 2020:

- ▶ Cases where writ or special leave petition (SLP) filed are pending on or before 31 January 2020 are pending.
- ▶ Cases where assessment order or appeal order or order in writ petition, as the case may be, passed on or before 31 January 2020 and the time limit for filing appeal or SLP falls beyond 31 January 2020.
- ▶ Cases which are pending before the Dispute Resolution Panel (DRP) or cases in respect of which the order giving effect is pending to be issued by the Tax Authority basis the directions of the DRP.

This is in line with the CII suggestion that the benefit of the scheme should be extended to DRP cases to pre-empt potential litigation.

- ▶ Cases where revision petitions filed are pending on or before 31 January 2020.
- ▶ Cases where assessment is made pursuant to search and seizure proceedings under the Income Tax Act and where the disputed tax amount is below INR 50m for the relevant tax year under the search proceedings.

Disqualification of cases of appeal in respect of which an enhancement notice has been issued by Commissioner (Appeals) [CIT(A)] has been deleted. Consequently, such cases are also eligible for the VSV Scheme.

In addition, under the Draft Bill, a declaration could not be filed by a taxpayer in respect of whom prosecution has been instituted under the Indian Penal Code (IPC) or for the purpose of enforcement of any civil liability on or before filing a declaration under the VSV Scheme. The Act now provides that the disqualification under these cases will apply to a taxpayer only if prosecution under the IPC or enforcement of civil liability has been

initiated by the tax authority or who has been convicted of an offense under the IPC consequent to prosecution initiated by the tax department.

Amount to be paid under the VSV Scheme

The Draft Bill provided for settlement of a dispute by paying 100% of the disputed tax or 25% of the disputed interest or penalty, as the case may be, regardless of the fact that the dispute relates to the taxpayer's appeal or the tax department's appeal. As per the Act, the VSV Scheme will now provide for payment of a reduced amount in cases of the tax department's appeal. Also, a higher amount would be needed to be paid for settlement in search cases.

The taxpayer will need to make payment as per the table below in order to opt for the VSV Scheme.

Particulars	Taxpayer opts before 31 March 2020	Taxpayer opts after 31 March 2020
Appeals filed by the Taxpayer		
Cases involving disputed tax, interest and penalty		
1. All eligible cases (except search case)	100% of the disputed tax	110% of the disputed tax (if quantum of 10% of disputed tax is more than the aggregate of interest and penalty, such excess shall be ignored).
2. Search cases	125% of the disputed tax (if quantum of 25% of disputed tax is more than the aggregate of interest	135% of the disputed tax (if quantum of 35% of disputed tax is more than the aggregate of interest

	and penalty, such excess shall be ignored)	and penalty, such excess shall be ignored)
Cases involving disputed penalty or interest or fee	25% of disputed penalty, interest or fee	30% of disputed penalty, interest or fee

In cases where an appeal or writ or SLP is filed by the tax authority on any issue before the appellate forum, the amount payable shall be 50% of the amount in the above table, calculated on such issue, in a manner to be prescribed.

CII had suggested this in its representation to the Government, where it was suggested to provide settlement at concessional amount as against headline rates proposed. Settlement at concessional (affordable) rate for taxpayers' appeals was suggested in CII representation.

Furthermore, in case of a taxpayer's appeal, if the taxpayer has already got a decision on any issue in its favour by the appellate authority or the HC and the same has not been reversed by any higher authority or court, the amount payable is reduced to 50% of the amount stated above.

Furthermore, in cases where opting for the VSV Scheme and payment of disputed tax results in reduction of Minimum Alternate Tax (MAT)/Alternate Minimum Tax (AMT) credit or losses or depreciation, the Act provides the following two options to the taxpayer:

- ▶ Include amount of tax related to reduction of MAT/AMT credit or loss or depreciation in the amount of disputed tax; or
- ▶ Carry forward the reduced MAT/AMT credit or loss or depreciation (as may be prescribed) without payment of disputed tax.

Calculation of the amount of disputed tax

The Draft Bill provided for a normative formula for the computation of “disputed tax” to be paid under the VSV Scheme. As per the Act, the disputed tax amount will need to be computed as follows:

Nature of case	Amount payable under the VSV Scheme (inclusive of surcharge and cess, but excluding interest)
Where an order is passed by the assessing officer (AO) but the time limit for appeal has not expired on 31 January 2020	Amount of tax payable as per AO's order
Where appeal/writ/SLP is pending before any appellate forum	Amount of tax payable if such appeal/writ/SLP was to be decided against the taxpayer
Where any appeal/writ is decided by the lower authority/HC but time limit for filing appeal/SLP has not expired on 31 January 2020	Amount of tax payable after giving effect to such order
Where objections are pending before DRP as on 31 January 2020	Amount payable if DRP was to confirm variation proposed in the draft order
Where DRP issued directions but AO has not passed the final assessment order on or before 31 January 2020	Amount of tax payable had the order been passed by AO
Where an application for revision under Section 264 filed by the taxpayer is pending as on 31 January 2020	Amount of tax payable if the application was to be rejected
Where CIT(A) has issued an enhancement notice under Section 251 on or before 31 January 2020	Disputed tax amount shall be increased by an amount of tax payable in respect of enhancement proposed

In addition, the Act also authorizes the Government to make rules for specifying the manner of computation of amount payable under the VSV Scheme.

Refund of excess tax paid under the Income Tax Act

As per the Draft Bill, there was no specific provision for a taxpayer to claim refund of amount paid under the Income Tax Act in excess of the amount payable under the VSV Scheme. The Act provides for refund of the amount paid under the Income Tax Act in excess of the amount required to be paid under the VSV Scheme. However, such excess amount will be refunded without any interest.

Impact of declaration under the VSV Scheme on assessments/proceedings under the Income Tax Act

When the Draft Bill was introduced, doubts were raised by the stakeholders on the possible impact of such a declaration on the assessment or proceedings in relation to tax years other than the tax year in respect of which the declaration has been made. The Act now clarifies that a declaration made under the VSV Scheme cannot be considered as setting any precedence for the taxpayer or the tax authority in relation to the issues covered under the declaration.

Procedural aspects

As per the Draft Bill, a taxpayer who made a declaration under the VSV Scheme was required to withdraw its appeal/writ before the HC or SC, as well as any claim made under arbitration, conciliation or mediation proceedings, and submit a proof of such withdrawal at the time of filing a declaration under the VSV Scheme. The Act now provides that such proof, along with the proof of payment of disputed tax, would need to be furnished before issuance of the final certificate of settlement of dispute by the designated authority under the VSV Scheme.

This is in line with CII recommendation that proof of withdrawal of appeal/proceedings (including those before HC, SC and international arbitral panels) may be allowed to be furnished at the stage of intimating Designated Authority (DA) under section 5(2) of Draft Bill about the payment of settlement of disputed tax arrears.